132-379

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~284~~ 110

MRS. NANCY A. BRADLEY, WIFE OF J. H. SCHEEN, AND CHRISTOPHER CHAFFE, JUNIOR, SYNDIC, APPELLANTS,

vs.

HORACE B. CLAFLIN, EDWARD E. EAMES, HORACE J. FAIRCHILD ET AL., COMPOSING THE FIRM OF H. B. CLAFLIN & CO., ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 2, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 384.

MRS. NANCY A. BRADLEY, WIFE OF J. H. SCHEEN, AND CHRISTOPHER CHAFFE, JUNIOR, SYNDIC, APPELLANTS,

vs.

HORACE B. CLAFLIN, EDWARD E. EAMES, HORACE J. FAIRCHILD ET AL., COMPOSING THE FIRM OF H. B. CLAFLIN & CO., ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Caption	*a*	1
Bill of complaint in No. 8896, filed Nov. 13, 1879	1	1
" " " 8897, " "	8	4
" " " 8898, " "	15	7
" " " 8899, " "	22	9
Copy of act of sale of Julius Lisso to Clara F. Lisso, filed Nov. 26, 1879	28	12
Copy of act of sale of J. H. Scheen to Nancy A. Scheen, filed Nov. 26, 1879	37	15
Agreement to consolidate four cases, Nos. 8896, 8897, 8898, and 8899, filed March 3, 1880	46	19
Order for subpœna *duces tecum* and appointing F. A. Woolfley, special examiner, filed Mch. 17, 1880	47	19
Marshal's return on above order	49	20
Rule for contempt	49	21
Marshal's return on rule	50	21
Copy of petition and schedule of surrender	51	21
Amended and supplemental bill, filed June 8, 1882	60	25
Supplemental bill, filed Jan. 23, 1883	64	26
Plea in bar, filed May 1, 1883	65	27

JUDD & DETWEILER, PRINTERS, WASHINGTON, JANUARY 30, 1889.

	Original.	Print.
Order fixing plea of Mrs. Scheen *et al.* for Dec. 20, 1883	69	29
Order overruling plea of John H. Scheen *et ux.*	69	29
Separate answer of Nancy A. Bradley, wife of John H. Scheen, to snpplemental bill	70	30
Petition of Nancy A. Bradley, wife of John H. Scheen, for leave to answer separately	93	38
Order granting foregoing petition	95	39
Cross-bill of Nancy A. Bradley, wife of John H. Scheen, filed June 10, 1884	95	39
Detailed Statement and account, filed June 10, 1884	120	48
Stipulation and demurrers on cross-bill, filed Dec. 19, 1885	122	49
Order setting down cause for hearing on Jan. 16, 1886	127	51
Order that surviving partners of H. B. Claflin & Co. prosecute cause	128	51
Order correcting decree of Jan'y 22, 1883	128	52
Decree entered and filed Feb. 6, 1886	129	52
Petition for appeal of Mrs. Nancy A. Scheen	133	54
Order allowing above appeal	136	55
Affidavit of Mrs. Nancy A. Scheen	137	55
Affidavit of Jas. M. T. Elliott, sheriff, &c., *et al.*	140	57
Petition for appeal of Chris. Chaffe, Jr., Syndic.	142	58
Order allowing above appeal	147	60
Bond for appeal of Mrs. Nancy A. Scheen	149	60
Bond for appeal of Chris. Chaffe, Jr., Syndic.	152	61
Certificate to record	156	63
Citation on appeal of Mrs. Nancy A. Scheen	157	64
Proof of service of same	158	64
Citation on appeal of Chris. Chaffe, Jr., Syndic.	159	65
Proof of service of same	160	65

a UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

HORACE B. CLAFLIN *et al.* vs. JULIUS LISSO *et als.* } No. 8896.
HENRY BERNHEIM *et al.* vs. JULIUS LISSO *et als.* } No. 8897.
SIMON AUGUST *et al.* vs. JULIUS LISSO *et als.* } No. 8898.
CHARLES F. CLAFLIN *et al.* vs. JULIUS LISSO *et als.* } No. 8899.
} Consolidated.

Appellees,

versus

Mrs. NANCY A. BRADLEY, Wife, &c., and CHRIS. CHAFFE, Jr., Syndic, &c., Appellants.

Transcript of record.

b Walter H. Rogers, Esq., for appellants; Kennard, Howe and Prentiss, for appellees.

Appeal returnable to the Supreme Court of the United States, at the city of Washington, D. C., on the second Monday of October, 1886.

1 *Bill of Complaint. Filed Nov. 13th, 1879.*

U. S. Circuit Court.

H. B. CLAFLIN *et al.* vs. JULIUS LISSO *et al.* } No. 8896.

To the judges of the circuit court of the United States for the district of Louisana:

Horace B. Claflin, Edward E. Eamer, Horace J. Fairchild, William S. Dunn, Dexter N. Force, Daniel Robinson, and John Claflin, of the city of New York, and each and all citzens of the State of New York, bring this their bill against Julius Lisso and Clara Forcheimer, his wife, and John N. Scheen and Nancy A. Bradley, his wife, each and all of Coushatta, Louisiana, and each and all citizens of the State of Louisiana.

And thereupon your orators complain and say:

First. That your orators now compose, and have for upwards of two years last past composed, the mercantile firm of H. B. Claflin & Co., domiciled and doing business as merchants in the city of New York; that the said Julius Lisso and John H. Scheen have, during the same time and at the periods hereinafter set forth, com-
2 posed the commercial firm of Lisso & Scheen, of Coushatta, Louisiana, and as such are justly and truly indebted unto your orators *in solido* in the sum of nine thousand five hundred and eighty $\frac{14}{100}$ dollars, with interest thereon at 7 per cent. per annum, as follows:

On promissory notes made by said Lisso and Scheen to orators' firm for value received in merchandize, viz:

One note for $2,161.76, dated New York, Sept. 1, 1878, payable Dec. 4th, 1878.

One note for $2,161.76, dated New York, Sept. 1, 1878, payable Jan'y 4, 1879.

One note for $2,161.77, dated New York, Sept. 1st, 1878, payable Feb'y 4th, 1879.

One note for $2,161.78, dated New York, Sept. 1, 1878, payable March 4th, 1879.

And on open account for goods, wares, and merchandize sold by orators to said Lisso and Scheen in September and October, 1878, and to them delivered at their request, to the amount and value of nine hundred and thirty-three $\frac{7}{100}$, due Dec. 18th (average), 1878, and said notes and account are made part hereof.

Second. That on or about the 4th December, 1878, your orators commenced their certain suit of attachment in the district
3 court of the parish of Red River against the said Lisso and Scheen and their said wives, the said Clara Forcheimer and Nancy A. Bradley, and others, in accordance with the law and practice of Louisiana, and certain property of said Lisso and Scheen, partnership and individual, was seized under said attachment; and your orators annex hereto and make part hereof the petition in said cause and the return to the writ of attachment issued in said suit, marked Exhibit A of this bill. They reiterate all the allegations of said petition, and they show that by the said seizure under said attachment they have acquired a just and valid lien and privilege on the property seized by virtue of and under the laws of Louisiana. They further show that all the defendants in said cause appeared therein by counsel and filed certain defences, as by said record will more fully and at large appear; that on the 19th day of May, 1879, the said cause was removed to this honorable court, and is now here under the No. 8883 of the docket; and, for greater certainty, your orators refer to the record of said cause and make the same part hereof.

4 Third. Your orators further show that the said Lisso and Scheen obtained the goods, wares, and merchandize sold by orators to them, aforesaid, by false representations as to their solvency made to orators' firm in New York and in contemplation of the fraud and insolvency hereinafter set forth.

Among other assets they reported the real estate here nafter men-

tioned, which they declared to be and which is justly worth upwards of twenty thousand dollars.

That thereafter and on or about the 23d November, 1878, being entirely insolvent and largely indebted not only to your orators, but to others, the said Julius Lisso and John H. Scheen did conspire and collude with their said wives and their said wives with them to cheat, hinder, delay, and defraud your orators by making a pretended, simulated, and fraudulent transfer of all the real estate of the said Lisso and Scheen unto their said wives, respectively, including alike the partnership and individual real property of said Lisso and Scheen in the town of Coushatta and parish of Red River, and also the interest in the telegraph line described in the
5 deeds.

That said pretended, simulated, and fraudulent transfers were made on the 23rd day of November, 1878, and recorded in the office of the parish recorder at Coushatta, and were by acts before D. H. Hayes, notary public, and for greater certainty your orators annex hereto and refer to said acts as a part of this bill.

Now, your orators aver that said acts purported to be *dations en paiement*, but they allege and charge that they and each of them was and is illegal, fraudulent, simulated, and void and worked and still work great injury to your orators; that they were and each of them was made when the transferees were insolvent; that after such transfers the transferees had not property enough left to pay orators' claims; that the said transferees and each of them knew of the insolvency of the said Lisso and Scheen and was a party to and colluded in said fraud. They further show that the price named in said pretended *dations en paiement* or transfer was wholly inadequate and fraudulent; and they show that even if the said acts or trans-
6 fers had and have any reality in law they gave and give an unjust and unlawful preference and are null and void; but they expressly aver and charge that the said Lisso and the said Scheen owed their said wives nothing whatever at the time of said pretended transfers, whether on paraphernal account or otherwise.

And your orators exhibit this their bill as well in aid of the preceedings in said suit No. 8883 as for such discovery and relief as they may be entitled to in the premises.

To the end therefore that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may upon their respective and several corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief full, true, direct, and perfect answer make to each and every allegation of this bill;

And that the said transfers or *dations en paiement* passed before D. H. Hayes, notary public, on the 23rd November, 1878, may be declared to be simulated, fraudulent, injurious, illegal, null, and void, and all the property therein described subjected to the just
7 claims of and debts due your orators as aforesaid and sold to pay the same;

And that the debts due and owing to your orators may be duly liquidated by proper decree as to the said defendants Lisso and Scheen, as well as to the other defendants;

And that if need be an account may be taken of the rents and profits of the said property which have been received by the said defendants, Mistress Lisso and Mistress Scheen, or their said husbands since the time of said pretended, simulated, and fraudulent *dations en paiement;*

And that an injuction may issue herein and a receiver be appointed according to the rules and practice of courts of equity;

And that your orators may have such further and other relief in the premises as the nature of the case may require and to your honors shall seem meet—

May it please your honors to grant unto your orators writs of subpena, to be directed to the said Julius Lisso and to Clara Forcheimer, his wife, and to John H. Scheen and Nancy A. Bradley, his wife, commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to
8 appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to this honerable court shall seem meet.

KENNARD, HOWE & PRENTISS,
Solicitors for Complainants.

W. W. HOWE, *Of Counsel.*

Bill of Complaint. Filed Nov. 13th, 1879.

U. S. Circuit Court. In Equity.

HENRY BERNHEIM *et al.*
vs.
JULIUS LISSO *et als.*
} No. 8897.

To the judges of the circuit court of the United States for the district of Louisiana:

Henry Bernheim and Elias August, of the city of New York, both citizens of the State of New York, bring this their bill against Julius Lisso and Clara Forcheimer, his wife, and John H. Scheen and Nancy A. Bradley, his wife, each and all of Coushatta, Louisiana, and each and all citizens of the State of Louisiana; and thereupon your orators complain and say:

9 First. That your orators now compose and for the two years last past have composed the commercial firm of H. Bernheim and August, of the city of New York, domiciled and doing business as merchants in said city; that the said Julius Lisso and John H. Scheen have during the same time and at the period hereinafter set forth composed the commercial firm of Lisso and Scheen, of Coushatta, Louisiana, and as such are justly and truly indebted unto your orators *in solido* in the sum of six hundred and fifty-five $\frac{38}{100}$ dollars, with interest thereon at five per cent. per annum, as follows:

On a promissory note made by said Lisso and Scheen to orators' firm, for value received in merchandise, for $543.13, made August 16th, 1878, due February 19th, 1879, with interest.

And on open account for goods, wares, and merchandise sold by orators to said Lisso and Scheen in October, 1878, and to them delivered at their request, to the amount and value of $112.25, due cash.

And said note and account are made part hereof.

Second. That on or about the 4th of December, 1878, your orator-commenced their certain suit of attachment, in the district
10 court of the parish of Red River, against the said Lisso and Scheen and the said Clara Forcheimer and Nancy A. Bradley, their said wives, and others, in accordance with the law and practice of Louisiana, and certain property of said Lisso and Scheen, partnership and individual, was seized under said attachment; and your orators annex hereto and make part hereof the petition in said cause and the return to the writ of attachment issued in said suit, marked Exhibit "A" of this bill.

They reiterate all the allegations of said petition and they show that by the said seizure under said attachment they have acquired a just and legal lien and privilege on the property seized by virtue of and under the laws of Louisiana. They further show that all the defendants in said cause appeared therein by counsel and filed certain defences, as by said record will more fully and at large appear.

That on the 19th day of May, 1879, the said cause was removed to this honorable court and is now here under the No. 8880 of the docket; and for greater certainty your orators refer to the record of said cause and make the same part hereof.

11 Third. Your orators further show that the said Lisso and Scheen obtained the goods, wares, and merchandise sold by orators to them as aforesaid by false representations as to their solvency, made to the agent of orators and in contemplation of the fraud and insolvency hereinafter set forth.

That thereafter and on or about the 23rd of November, 1878, being entirely insolvent and largely indebted not only to your orators but to others, the said Julius Lisso and John H. Scheen did conspire and collude with their said wives and their said wives with them to cheat, hinder, delay, and defraud your orators by making a pretended, simulated, and fraudulent transfer of all the real estate of the said Lisso and Scheen unto their said wives, respectively, including alike the partnership and individual real property of said Lisso and Scheen in the town of Coushatta and parish of Red River, and also the interest in the telegraph line described in the deeds.

That said pretended, simulated, and fraudulent transfers were made on the 23rd day of November, 1878, and recorded in the office of the parish recorder at Coushatta, and were by acts before
12 D. H. Hayes, notary public, and for greater certainty your orators annex hereto and refer to said acts as a part of this bill.

Now, your orators aver that said acts purported to be *dations en paiement*, but they allege and charge that they and each of them was and is illegal, fraudulent, simulated, and void and worked and still work great injury to your orators; that they were and each of them was made when the transferrers were insolvent; that after

said transfers the transferrers had not property enough left to pay orators' claims; that the said transferrers and each of them knew of the insolvency of said Lisso and Scheen and was a party to and colluded in said fraud.

They further show that the price named in said pretended *dations en paiement* or transfer was wholly inadequate and fraudulent, and they show that even if the said acts or transfers have or had any reality in law they gave and give an unjust and unlawful preferance and are null and void; but they expressly aver and charge that said Lisso and said Scheen owed their said wives nothing whatever at the time of said pretended transfers, whether on paraphernal account or otherwise.

13 And your orators exhibit this their bill, as well in aid of the proceedings in said suit No. 8880 as for such discovery and relief as they may be entitled to in the premises.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to each and every allegation of this bill;

And that the said transfers *dations en paiement*, passed before D. H. Hayes, notary public, on the 23rd November, 1878, may be declared to be simulated, fraudulent, injurious, illegal, null, and void, and all the property therein described subjected to the just claims of and debts due your orators as aforesaid and sold to pay the same;

And that the debts due and owing to your orators may be duly liquidated by proper decree as to the said defendants Lisso
14 and Scheen as well as to the other defendants;

And that, if need be, an account may be taken of the rents and profits of the said property which have been received by the said defendants, Mistress Lisso and Mistress Scheen, or their said husbands since the time of said pretended, simulated, and fraudulent *dations en paiement;*

And that an injunction may issue herein and a receiver be appointed, according to the rules and practice of courts of equity, and that your orators may have such further and other relief in the premises as the nature of the cause may require and to your honors shall seem meet—

May it please your honors to grant unto your orators writs of subpena, to be directed to the said Julius Lisso and to Clara Forcheimer, his wife, and to John H. Scheen and Nancy A. Bradley, his wife, commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, and direct and perfect answer to make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to this honorable court may seem meet.

15 KENNARD, HOWE & PRENTISS,
Solicitors for Complainants.

W. W. HOWE, *Of Counsel.*

Bill of Complaint. Filed Nov. 13th, 1879.

U. S. Circuit Court. In Equity.

SIMON AUGUST *et al.*
vs.
JULIUS LISSO *et als.*
No. 8898.

To the judges of the circuit court of the United States for the district of Louisiana:

Simon August, Charles L. Bernheim, and Felix L. Bauer, of the city of New York and all citizens of the State of New York, bring this their bill against Julius Lisso and Clara Forcheimer, his wife, and John H. Scheen and Nancy A. Bradley, his wife, each and all of Coushatta, Louisiana, and each and all citizens of the State of Louisiana; and thereupon your orators complain and say:

First. That your orators now compose and for the two years last past have composed the commercial firm of August, Bernheim & Bauer, of the city of New York, domiciled and doing business as merchants in said city; that the said Julius and John H.
16 Scheen have during the same time and at the period hereinafter set forth composed the commercial firm of Lisso & Scheen, of Coushatta, Louisiana, and as such are justly and truly indebted unto your orators *in solido* in the sum of twenty-three hundred and twenty-six $\frac{25}{100}$ dollars, with interest thereon at seven per cent. per annum from maturities as follows:

On a promissory note made by said Lisso and Scheen to orators' firm, for value received in merchandise, for $1,422.25, made September 1st, 1878, due March 4th, 1879, with interest.

And on open account for goods, wares, and merchandise sold by orators to said Lisso and Scheen in October, 1878, and to them delivered at their request, to the amount and value of $904.11, due cash.

And said note and account are made part hereof.

Second. That on or about the 3rd of December, 1878, your orators commenced their certain suit of attachment in the district court of the parish of Red River against the said Lisso and Scheen and the said Clara Forcheimer and Nancy A. Bradley, their wives, and others, in accordance with the law and practice of Louisiana,
17 and certain property of said Lisso and Scheen, partnership and individual, was seized under said attachment; and your orators annex hereto and make part hereof the petition in said cause and the return to the writ of attachment issued in said suit, marked Exhibit "A" of this bill. They reiterate all the allegations of said petition, and they show that by the said seizure under said attachment they have acquired a just and legal lien and privilege on the property seized by virtue of and under the law of Louisiana.

They further show that all the defendants in said cause appeared therein by counsel and filed certain defences, as by said record will more fully and at large appear.

That on the 19th day of May, 1879, the said cause was removed to this honorable court, and is now here under the No. 8881 of the docket; and for greater certainty your orators refer to the record of said cause and make the same part hereof.

Third. Your orators further show that the said Lisso & Scheen obtained the goods, wares, and merchandise sold by orators to them as aforesaid by false representations as to their solvency, made to the agent of orators and in contemplation of the fraud and in-
18 solvency hereinafter set forth; that thereafter and on or about the 23rd of November, 1878, being entirely insolvent and largely indebted, not only to your orators but to others, the said Julius Lisso and John H. Scheen did conspire and collude with their said wives and their said wives with them to cheat, hinder, delay, and defraud your orators by making a pretended, simulated, and fraudulent transfer of all the real estate of the said Lisso and Scheen unto *to* their said wives, respectively, including alike the partnership and individual real property of said Lisso and Scheen in the town of Coushatta and parish of Red River, and also the interest in the telegraph line described in the deeds.

That said pretended, simulated, and fraudulent transfers were made on the 23rd day of November, 1878, and recorded in the office of the parish recorder at Coushatta and were by acts before D. H. Hayes, notary public, and for greater certainty your orators annex hereto and refer to said acts as part of this bill.

Now, your orators aver that said acts purported to be *dations en paiement*, but they allege and charge that they and each
19 of them was and is illegal, fraudulent, simulated, and void and worked and still work great injury to your orators; that they were and each of them was made when the transferrers were insolvent; that after said transfers the transferrers had not property enough left to pay orators' claims; that the said transferees and each of them knew of the insolvency of said Lisso and Scheen and was a party to and colluded in said fraud. They further show that the price named in said pretended *dation en paiement* or transfer was wholly inadequate and fraudulent; and they show that even if the said acts or transfers have or had any reality in law they gave and give an unjust and unlawful preference, and are null and void; but they expressly aver and charge that said Lisso and said Scheen owed their said wives nothing whatever at the time of said pretended transfer, whether on paraphernal account or otherwise.

And your orators exhibit this their bill as well in aid of the proceedings in said suit No. 881 as for such discovery and relief as they may be entitled to in the premises.

20 To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their respective corporal oaths and according to the best and utmost of their several respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to each and every allegation of this bill;

And that the said transfers and *dations en paiement*, passed before D. H. Hayes, notary public, on the 23rd November, 1878, may be

declared to be simulated, fraudulent, injurious, illegal, null, and void, and all the property therein described subjected to the just claims of and debts due your orators as aforesaid and sold to pay the same;

And that the debts due and owing to your orators may be duly liquidated by proper decree as to the said defendants Lisso and Scheen as well as to the other defendants;

And that, if need be, an account may be taken of the rents and profits of the said property which have been received by the said defendants, Mistress Lisso and Mistress Scheen, or their said husband- since the time of said pretended, simulated, and fraudulent *dations en paiement;*

21 And that an injunction may issue herein and a receiver be appointed according to the rules and practice of courts of equity, and that your orators may have such further and other relief as the nature of the cause may require and to your honors shall seem meet—

May it please your honors to grant unto your orators writs of subpena, to be directed to the said Julius Lisso and to Clara Forcheimer, his wife, and to John H. Scheen and Nancy A. Bradley, his wife, commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, direct, and perfect answer to make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to this honorable court may seem meet.

KENNARD, HOWE & PRENTISS,
Solicitors for Complainants.

W. W. HOWE, *Of Counsel.*

22 *Bill of Complaint. Filed Nov'r 13th,* 1879.

U. S. Circuit Court. In Equity.

CHAS. F. CLAFLIN *et al.*
vs.
JULIUS LISSO *et als.*
No. 8899.

To the judges of the circuit court of the United States for the district of Louisiana:

Charles F. Claflin and Thomas B. Thayer, of Boston, Massachusetts, both citizens of the State of Massachusetts, bring this their bill against Julius Lisso and Clara Forcheimer, his wife, and John H. Scheen and Nancy A. Bradley, his wife, each and all of Coushatta, Louisiana, and each and all citizens of the State of Louisiana; and thereupon your orators complain and say:

First. That your orators now compose and for the two years last past have composed the commercial firm of Claflin and Thayer, of the city of Boston, domiciled and doing business as merchants in said city; that the said Julius Lisso and John H. Scheen have during the same time and at the period hereinafter set forth com-

posed the commercial firm of Lisso & Scheen, of Coushatta,
23 Louisiana, and as such are justly and truly indebted unto your orators *in solido* in the sum of twenty-three hundred and thirty-four $\frac{57}{100}$ dollars, with seven per cent. per annum interest (average) from March 15th, 1879, on open account for goods, wares, and merchandise sold by orators to said Lisso and Scheen, and to them delivered at their request, to the amount and value of $2,334.57.

And said account is made part hereof.

Second. That on or about the 7th of December, 1878, your orators commenced their certain suit of attachment in the district court of the parish of Red River against the said Lisso and Scheen and the said Clara Forcheimer and Nancy A. Bradley, their said wives, and others, in accordance with the law and practice of Louisiana, and certain property of said Lisso and Scheen, partnership and individual, was seized under said attachment.

And your orators answer hereto and make part hereof the petition in said cause, and the return to the writ of attachment issued in said suit, marked Exhibit "A" of this bill. They reiterate all the allegations of said petition, and they show that by the said seizure
24 under said attachment they have acquired a just and legal lien and privilege on the property seized by virtue of and under the laws of Louisiana.

They further show that all the defendants in said cause appeared therein by counsel and filed certain defences, as by said record will more fully and at large appear; that on the 19th day of May, 1879, the said cause was removed to this honorable court, and is new here under the No. 8882 of the docket, and for greater certainty your orators refer to the record of said cause and make the same part hereof.

Third. Your orators further show that the said Lisso and Scheen obtained the goods, wares, and merchandise sold by orators to them as aforesaid by false representations as to their solvency made to orators and in contemplation of the fraud and insolvency hereinafter set forth.

Among other assets they reported the real estate hereinafter mentioned, which they declared to be and which is justly worth upwards of twenty thousand dollars.

That thereafter and on or about the 23rd of November, 1878, being entirely insolvent and largely indebted, not only to
25 your orators, but to others, the said Julius Lisso and John H. Scheen did conspire and collude with their said wives and their said wives with them to cheat, hinder, delay, and defraud your orators by making a pretended, simulated, and fraudulent transfer of all the real estate of the said Lisso and Scheen unto their said wives, respectively, including alike the partnership and individual real property of said Lisso and Scheen in the town of Coushatta and parish of Red River, and also the interest in the telegraph line described in the deeds.

That said pretended, simulated, and fraudulent transfers were made on the 23d day of November, 1878, and recorded in the office

of the parish recorder at Coushatta, and were by acts before D. H. Hayes, notary public, and for greater certainty your orators annex hereto and refer to said acts as part of this bill.

Now, your orators aver that said acts purported to be *dations en paiement*, but they allege and charge that they and each of them was and is illegal, fraudulent, simulated, and void, and worked and still work great injury to your orators; that they were and each of them was made when the transfer-ers were insolvent; that
26 after said transfers the transferrers had not property enough left to pay orators' claim; that the said transferees and each of them knew of the insolvency of said Lisso and Scheen and was a party to and colluded in said fraud.

They further show that the price named in said pretended *dations en paiement* or transfers was wholly inadequate and fraudulent, and they show that even if the said acts or transfers have or had any reality in law they gave and give an unjust and unlawful preference and are null and void; but they expressly aver and charge that said Lisso and said Scheen owed their said wives nothing whatever at the time of said pretended transfers, whether on paraphernal account or otherwise.

And your orators exhibit this their bill as well in aid of the proceedings in said suit No. 8822 as for such discovery and relief as they may be entitled to in the premises.

To the end, therefore, that said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their respective corporal oaths and according to the best and utmost of their several and respective knowledge, re-
27 membrance, information, and belief, full, true, direct, and perfect answer make to each and every allegation of this bill;

And that the said transfers and *dations en paiement*, passed before D. H. Hayes, notary public, on the 23rd November, 1878, may be declared to be simulated, fraudulent, injurious, illegal, null and void, and all the property therein described subjected to the just claims of and debts due your orators as aforesaid, and sold to pay the same;

And that the debts due and owing to your orators may be duly liquidated by proper decree as to the said defendants Lisso and Scheen as well as to the other defendants;

And that, if need be, an account may be taken of the rents and profits of the said property which have been received by the said defendants, Mistress Lisso and Mistress Scheen, or their said husbands since the time of said pretended, simuiated, and fraudulent *dations en paiement;*

And that an injunction may issue herein and a receiver be appointed according to the rules and practice of courts of equity, and that your orators may have such further and other relief in the premises as the nature of the cause may require and
28 to your honors shall seem meet—

May it please your honors to grant unto your orators writs of subpena, to be directed to the said Julius Lisso and to Clara Forcheimer, his wife, and to John H. Scheen and Nancy A. Bradley, his

wife, commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, and direct and perfect answer to make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to this honorable court may seem meet.

KENNARD, HOWE & PRENTISS,
Solicitors for Complainants.

W. W. HOWE, *Of Counsel.*

Copy of Act of Sale of Julius Lisso to Clara F. Lisso. Filed Nov. 26th, 1879.

STATE OF LOUISIANA, *Parish of Red River:*

Be it remembered that on this, the twenty-third, day of November, one thousand eight hundred and seventy-eight, before
29 me, Duke Hamilton Hayes, notary public, duly commissioned and qualified, in and for said State and parish, personally came and appeared Julius Lisso, of said State and parish, who then and there stated to me, said notary, in the presence of James F. Pierson and Ben. Wolfson, witnesses of lawful age, sex, and domicile, that for the considerations hereinafter named, mentioned, recited, and described he does by these presents bargain, convey, and give in payment, and has hereby bargained, conveyed, and given in payment, to his wife, likewise of same residence, Clara F. Forcheimer, to wit, the following named and described tracts, parcels, and bodies of land and lots in the town of Coushatta, viz:

(One.) Lots numbered one (1) and ten (10), in block fifteen (15), with all improvements thereon, and all servitudes, rights of way, and streets and alley-ways adjacent thereto and the uses thereof, and known as the Julius Lisso residence lot, in town of Coushatta, on caving bank, and valued at five hundred dollars.

(Two.) Lots numbered two (2), three (3), five (5), six (6), seven (7), and eight (8), in block thirteen (13), in town of Coushatta, all vacant, except fence around it, and valued at one hundred and fifty dollars.

(3.) Two blaze-faced horses of dun color, and named Nich-
30 olls and Wiltz, same used to work in carriage, and valued at two hundred dollars for the pair.

(4.) One old black horse, named Chester, valued at twenty-five dollars.

(5.) One family carriage used on Julius Lisso's premises, one hundred dollars.

(6.) One buggy, valued at twenty-five dollars.

(7.) One undivided half interest in and to the brick store and lot situated on the corner of Carroll and Front streets, in town of Coushatta; likewise the telegraph office now occupied by clerks as sleeping-room and adjoining the brick store; likewise lot on Carroll street, with all improvements thereon, and including the new warehouse, being the whole of block numbered one (1), except the J. M. Brown lot, off the southwest corner, and the Snead lots, off the

northeast corner, the boundaries of which are now established, dividing the same, except between the telegraph office and Terry & Co., the whole of which—being an undivided one-half interest—valued at two thousand five hundred dollars for whole.

(8.) Lot numbered — on Front street, in town of Coushatta, known as the J. H. Burke lot, and fronting on Front street and situated between the lots of J. H. Beaird on one side and Mrs.
31 M. K. Gahagan's store on the other, and running through from Front to Abney street, with improvements thereon, and valued at fifty dollars, being an undivided half interest, for whole.

(9.) Undivided one-half interest in and to lot numbered seven (7), fronting sixty (60) feet on Front street and running back to Abney street, and known as the warehouse lot, with improvements thereon, and valued at one hundred and fifty dollars for the whole.

(10.) One undivided one-half interest in the Merchants' Union Telegraph Line, from Minden, in Webster parish, to *to* Natchitoches, in Natchitoches parish, Louisiana, with all the offices, fixtures, batteries, appurtenances, wire, insulators, office furniture, rights of way, in complete working order, valued at the sum of five hundred dollars for the whole (that is, one-third interest conveyed).

(11.) The store-house and lot known as the Lisso and Brother store-house and lot, said lot lying between the warehouse lot and the Guthrie office lot, with twenty-five (25) feet front on Front street, and running back two hundred (200) feet to Abney street, with fifty-six (56) feet front on Abney street, valued at one thousand dollars for the whole, and one undivided half interest conveyed.

32 (12.) The warehouse and lot lying south of the Lisso & Bro. store-house and lot just above described, having in all — feet on Front street, same to include, with the store-house and lot, all the lands lying between the store-house and lot of S. & P. Lisso and Dr. W. Guthrie'- office lot, — at one hundred and fifty dollars for whole, one undivided half interest conveyed.

(13.) One undivided one-half interest in lot numbered ten (10), in block numbered fourteen (14), with all impro-ements thereon, valued at one hundred dollars for the whole.

(14.) One undivided one-half interest in vacant lots numbered one (1), five (5), six (6), seven (7), and eight (8), in block numbered two (2), valued at fifty dollars for the whole.

(15.) One undivided interest in vacant lots numbered one (1), two (2), seven (7), and nine (9), in block three (3), and valued at fifty dollars for the whole.

(16.) One undivided one-fourth interest in the lands acquired from D. H. & J. R. Hayes by Lisso & Bro., Dewees, and M. H. Twitchell, bounded on the south by ditch running from south of jail to levee, on east by levee on Bayou Nicholas, on north by lands formerly belonging to Carroll and Twitchell, and west by the town of Coushatta, valued at two hundred and fifty dollars, and
33 one undivided half of said one undivided fourth interest only conveyed.

(17.) One undivided one-half interest in and to *to* the land known as the Goldsby tract of land, lying east of Bayou Nicholas

and west of range line dividing —, from range ten (10), bounded on north by J. C. Perault'- claim; also the west half of section nineteen (19), north half of northwest quarter of section thirty (30), township twelve (12), range (9), and in all containing four hundred and eighty (480) acres, more or less, and excepting that portion previously sold off, and valued at two hundred dollars for the whole.

(18.) One undivided one-half interest of a portion of the Cowden tract, acquired by Love and Scheen from George Hammett by act of sale passed before D. H. Hayes, notary public, on the 18th January, 1876, lying east of Bayou Nicholas and east of slough emptying into said bayou, excepting lots previously sold off, valued at one hundred dollars for the whole, said town lots all situated in the town of Coushatta, and the real estate adjacent thereto, and the whole price at which same is conveyed is thirty-five hundred and fifty dollars.

Be it further known and remembered that on the seventh
34 (7) day of July, eighteen hundred and seventy-four, Julius Lisso received of Miss Clara Forcheimer, of New Orleans, the sum of five thousand dollars in the currency of the United States, and which she did on that date receive by donation or antenuptial gift from her father, Isaac Forcheimer, by a marriage contract, authentic in form, and duly recorded in the office of the recorder of Red River parish, Louisiana, on the 17th day of July, eighteen hundred and seventy-four (1874).

Also that Julius Lisso received of the paraphernal money of his wife, under her administration and control, the sum of one thousand dollars ($1,000) on the 15th of October, eighteen hundred and seventy-four (1874).

He also received of his said wife, Clara Forcheimer, the further and additional sum of one thousand dollars on the 25th of May, 1875, also under her administration and control.

He also received the further sum of one thousand dollars of his said wife, Clara Forcheimer, under her administration and control, *and* on the 8th of March, 1876.

He also received of his wife, Clara Forcheimer, six hun-
35 dred and eighty dollars of her separate and paraphernal funds, under her administration and control, on the 8th day of June, 1877.

The whole amount aggregating eight thousand six hundred and eighty ($8,680) dollars, and the whole of which was the paraphernal money of his said wife, Clara Forcheimer, and either brought by her into the marriage or received by her afterwards, and which was at the date her husband, Julius Lisso, received same under her administration and control, and was received and used by him, and which forms a just debt against him, and which is secured by tacit mortgage on all his realty.

Be it further remembered that it is the declared intention of said husband, Julius Lisso, vendor, to convey and give in payment all the foregoing described, bounded, and valued real estate, town lots and personal property unto his wife, Clara Forcheimer, vendee, who is personally present and accepting the same for herself; to have and to hold for her own free use, benefit, and behoof forever, with

full and perfect guarantee of title, same to be and remain under her exclusive control and administration and free from and out-
36 side of the community of acquests and gains now existing between herself and her husband.

Be it further stipulated and understood that the purchase price of same hereinbefore named and recited is to be credited on the sum of eight thousand six hundred and eighty dollars, which Julius Lisso is indebted to his wife, Clara Forcheimer, for sums of her paraphernal money received and used, as above receipted, and to that extent she acknowledges same to be paid, and both vendor and vendee stipulates that same shall be applied in equal portions to each installment of said debt.

The vendor and vendee consent and agree that the said notary, D. H. Hayes, be exhonerated from all liability arising out of the non-production of a certificate of mortgages, which is expressly waived, and they each affirm that the taxes on all said property has been fully paid.

Therefore I, the said notary public, have caused said vendor and vendee to sign these presents in the presence of the two subscribing witnesses on the day in the beginning written as the date hereof.

(Signed) JULIUS LISSO.
" CLARA F. LISSO.

Attest:
J. F. PEARSON.
BEN. WOLFSON.

37 D. H. HAYES,
Notary Public.

Endorsed: "Received and filed for record in Book of Mortgages and Conveyances this 23rd day of November, 1878. J. Y. Tooke, recorder." "Recorded in Book B of Conveyances, folios 222 to 226, and in Book C of Mortgages, folios 444 to 468, Nov. 23, '78. J. Y. Tooke, recorder."

I do hereby certify that the above and foregoing pages from 1 to 10, inclusive, contain a true and correct copy of the original on file and of record, as per endorsement above stated, in my office.

In witness whereof I hereunto set my hand and seal of office, at Coushatta, Louisiana, this 18th day of November, 1879.

[Seal of Parish Recorder.]

J. Y. TOOKE, *Recorder.*

Copy of Act of Sale of J. H. Scheen to Nancy A. Scheen. Filed Nov. 26th, 1879.

STATE OF LOUISIANA, *Parish of Red River:*

Be it remembered that on this the twenty-third day of No-
38 vember, one thousand eight hundred and seventy-eight, before me, Duke Hamilton Hayes, a notary public, duly commissioned and qualified, in and for said State and parish, personally came and appeared John Henry Scheen, of said State and parish, who then and there stated to me, the said notary, in the presence of

Wm. F. Chase and Pinchus Leebreich, witnesses of lawful age, sex, and domicile, that for the considerations hereinafter named, mentioned, recited, and decribed he does by these presents bargain, convey, and give in payment and has hereby bargained, conveyed, and given in payment, to his wife, likewise of same residence, Mrs. Nancy A. Bradley, to wit, the following named and described tracts, parcels, and bodies of land and lots in the town of Coushatta, viz:

A lot in the town of Coushatta, known as J. H. Scheen's residence lot and situated north of Carroll street, between the Bayou Nicholas and Coushatta bayou, bounding it on the east, north, and west and by Carroll street on south, less the lots that have been sold off to various parties, as shown by titles on record, with all the improvements thereon, together with all the uses, streets, rights of
39 way, and appurtenances thereto belonging, and valued at seven hundred and fifty dollars.

(2.) Two dark bay horses, same used to work in carriage, and valued at two hundred dollars for the pair.

(3.) One family carriage, used on J. H. Scheen's premises, valued at one hundred dollars.

(4.) One lot or tract of land acquired by J. H. Scheen at succession sale of Mrs. E. A. Carroll, deceased, in October, 1877, and being within the corporate limits of the town of Coushatta, bounded on the north by the improved lots on Carroll street, on the west by the town of Coushatta, on the south by Main street, and on the east by lands of Lisso and Twitchell, less the lots sold off as shown by recorded titles, with all the improvements thereon, valued at three hundred dollars, one undivided half interest conveyed.

(5.) One undivided half interest in and to the brick store and lot situated on the corner of Carroll and Front street-, in the town of Coushatta; likewise the telegraph office now occupied by clerks as a sleeping-room and adjoining the brick store; likewise lot on Carroll street, with all the improvements thereon, and including the
40 new warehouse, being the whole of block No. one, except the J. M. Brown lot, off the southwest corner, and the Snead lot, off the northeast corner, the boundaries of which are now established dividing the same, except between the telegraph office and Terry & Co., the whole of which, being an undivided half interest, valued at two thousand five hundred dollars for the whole.

(6.) Lot No. —, on Front street, in town of Coushatta, known as the J. H. Burke lot, and fronting on Front street, and situated between the lots of J. H. Beaird, on the one side, and Mrs. M. K. Gahagan'- store lot, on the other, and running through from Front street to Abney street, with improvements thereon, and valued at fifty dollars (being an undivided half interest for whole).

(7.) The undivided half interest in and to lot No. seven, fronting sixty feet on Front street and running back to Abney street, and known as the warehouse lot, with improvements thereon, and valued at one hundred and fifty dollars for the whole.

(8.) One undivided half interest in the Merchants' Union Telegraph line from Minden, in Webster parish, to Natchitoches, in Natchitoches parish, La., and all the offices, fixtures, batter-

41 ies, appurtenances, wire, insulators, office furniture, and rights of way, in complete working order, valued at the sum of five hundred dollars for the whole, one-third interest only conveyed.

(9.) The store-house and lot known as the Lisso and Bro. store-house and lot, said lot lying between the warehouse lot and the Guthrie office lot, with twenty-five feet front on Front street and running back two hundred feet to Abney street, with fifty-six feet front on Abney street, valued at one thousand dollars for the whole, one undivided half interest conveyed.

(10.) The warehouse and lot lying south of the Lisso and Bro. store-house and lot just above described, having in all — feet on Front street, same to include, with the store-house and lot, all the lands lying between the store-house and lot of S. & P. Lisso and Dr. W. Guthrie-' office lot, at one hundred and fifty dollars for the whole, one undivided half interest conveyed.

(11.) One undivided half interest in lot No. ten, in block No. fourteen, with all the improvements thereon, valued at one hundred dollars for the whole.

(12.) One undivided half interest in vacant lots Nos. one, five, six, seven, and eight, in block No. two, valued at fifty dollars for the whole.

42 (13.) One undivided half interest in vacant lots Nos. one, two, seven, and nine, in block three, and valued at fifty dollars for the whole.

(14.) One undivided one-fourth interest in lands acquired from D. H. and J. R. Hayes by Lisso & Bro., Dewees and Twitchell, bounded on the south by ditch running from south of jail to Levee and east by levee on Bayou Nicholas, on north by lands formerly belonging to Carroll and Twitchell, and west by the town of Coushatta, valued at two hundred and fifty dollars, and one undivided half of one-fourth interest conveyed.

(15.) One undivided half interest in and to the land known as the Goldsby tract of land, lying east of Bayou Nicholas and west of range line —, dividing from range ten, bounded on the north by J. C. Perrault claim ; also the W. ½ of sec. 19, N. ½ of N. W. ¼ of section thirty, township twelve, range nine, containing four hundred and eighty acres, more or less, and excepting that portion previously sold off, and valued at two hundred dollars for the whole.

43 (16.) One undivided half interest of a portion of the Cowden tract acquired by Love and Scheen from George Hammett by an act of sale passed before D. H. Hayes, notary, on the eighteenth of January, eighteen hundred and seventy-six, lying east of Bayou Nicholas and east of slough emptying in said bayou, excepting lots previously sold off, valued at one hundred dollars for the whole.

Said town lots all situated in the town of Coushatta and the real estate adjacent thereto, and the whole price at which same is conveyed is the sum of thirty-eight hundred and fifty dollars.

Be it further known and remembered that on the seventh day of June, eighteen hundred and seventy-two, J. H. Scheen received from

Hampton Bradley, the father of Nancy A. Bradley, the sum of ten thousand dollars, being one-half interest of the business of Scheen and Bradley and of H. Bradley's individual business, and as a donation to his daughter Nancy, said parties then residing in Bienville parish, La., and which consisted of goods, wares, and merchandise, and rights and credits, and which was the paraphernal property of the said wife Nancy under her administration and control
44 through the agency of her father, H. Bradley, and the same was used and consumed by J. H. Scheen, and the same constituted a debt against him, with a tacit mortgage on his real property.

Be it further remembered that it is the declared intention of said husband, J. H. Scheen, vendor, to convey and give in payment all of the foregoing described, bounded, and valued real estate, town lots, and personal property unto his wife, Nancy Bradley, vendee, who is personally present and accepting the same for herself; to have and to hold for her own free use, benefit, and behoof forever, with full and perfect guarantee of title, to be and remain under her exclusive control and administration and free from and outside of the community of acqui-ts and gains now existing between herself and husband.

Be it further stipulated and understood that the purchase price of same, hereinbefore named and recited, in the sum of ten thousand dollars, which J. H. Scheen is indebted to his wife, Nancy Bradley, for the sums of her paraphernal money received and used, as above specified, and to that extent she acknowledges the same to be paid.

45 The vendor and vendee consent and agree that the said notary, D. H. Hayes, be exonerated from all liability arising out of the non-production of certificate of mortgages, which is expressly waived, and they each affirm that all the taxes on the said property has been fully paid.

Therefore I, the said notary, have caused said vendor and vendee to sign these presents in the presence of the two subscribing witnesses on the day in the beginning written as the date hereof.

(Signed) J. H. SCHEEN.
" NANCY A. SCHEEN.

Attest:
W. F. CHASE.
PERKUS LEEBREICH.

D. H. HAYES,
Notary Public.

Endorsed: "Received and filed for record in Book of Mortgages and Conveyances this 23rd of Nov'r, 1878. J. Y. Tooke, recorder." "Recorded in Book B of Conveyances, folios 226 to 229, and recorded in Book C of Mortgages, folios 448 to 452, Nov'r 23rd, 1878. J. Y. Tooke, recorder."

I do hereby certify that the above and foregoing pages, from 1 to 9, inclusive, contain a true and correct copy of the original
46 on file and of record, as per endorsements above stated, in my office.

In witness whereof I hereunto set my hand and seal of office, at Coushatta, Red River parish, Louisiana, this 18th day of November, 1879.

[Seal of Recorder.]

J. Y. TOOKE, *Recorder.*

Agreement to Consolidate Four Cases, Nos. 8896, 8897, 8898, *and* 8899. *Filed March 3rd,* 1880.

United States Circuit Court, District of Louisiana.

H. B. CLAFLIN *et al.*
vs.
JULIUS LISSO *et al.* } No. 8896.

Same Court.

HENRY BERNHEIM *et al.*
vs.
JULIUS LISSO *et als.* } No. 8897.

Same Court.

SIMON AUGUST *et al.*
vs.
JULIUS LISSO *et als.* } No. 8898.

Same Court.

CHARLES F. CLAFFIN *et al.*
vs.
JULIUS LISSO *et als.* } No. 8899.

It is agreed between the complainants and defendants in
47 the above-entitled causes that the same be consolidated and tried together as one cause.

Feb'y 7th, 1880.

THOS. J. SEMMES, *Sol. for Defendants.*
KENNARD, HOWE & PRENTISS,
Sol'r- for Complainants.

Order for Subp. D. T. and Appointing F. A. Woolfley Special Ex'r. Filed March 17th, 1880.

U. S. Circuit Court. In Equity.

H. B. CLAFLIN *et al.*
vs.
JULIUS LISSO *et als.* } No-. 8896, 8897, 8898, 8899. Consolidated.

In these consolidated causes, on motion of W. W. Howe, of counsel for the complainants, and on suggesting the filing of replication,

and that the causes are ready for the taking of testimony, and that it is necessary to have an inspection, and by experts, of all the books and papers of the firm of Lisso and Scheen or which pertain to their business, and especially the following:

48 All books of account, blotters, day books, ledgers, journals, cash books, check books, draft books, letter books, and bank books, and all business letters received;

And all the foregoing containing any entry record, memorandum, or reference to the business of said firm from January 1st, 1878, to date of service of this order;

Also private books of account of Julius Lisso and John H. Scheen, individually, letter books and letters and memorandum referring to the property in contest herein—

It is ordered that the said Julius Lisso and John H. Scheen, composing the late firm, do produce all said books and papers before F. A. Woolfley, Esq., who is hereby appointed examiner in these causes, on Wednesday, the 31st day of March, 1880, and that the said Julius Lisso and John H. Scheen do themselves appear to be examined themselves with reference to the said books and papers and the issues in this cause.

U. S. OF AMERICA:

W. W. Howe, of counsel for complainants, who are all absent from the State, being duly sworn, says that the suggestions of the

49 foregoing motion are correct, to the best of his information and belief.

W. W. HOWE.

Sworn to and subscribed before me this 17th day of March, 1880.
T. V. COUPLAND, *D'y Clerk.*

Marshal'- Return.

Received March 17, 1880, by the United States marshal, and on the 23rd day of March, 1880, served a copy of the within motion and order and notice, &c., on the within-named Julius Lisso and John H. Scheen, of the late firm of Lisso & Scheen, defendants herein, by handing a copy of the same to each of them in person on the said 23rd of March, 1880, in the town of Coushatta, parish of Red River, La., 510 miles from New Orleans.

N. O., March 29, '80.

W. D. WESTON,
D'y U. S. Marshal.

Rule for Contempt. Entered & Filed April 28th, 1880.

U. S. Circuit Court. In Equity.

BERNHEIM *et al.*
vs.
JULIUS LISSO *et al.* } No. 8897.

AUGUST *et al.*
vs.
SAME. } No. 8898.

50 CHARLES B. CLAFLIN
vs.
SAME. } No. 8899.

H. B. CLAFLIN
vs.
SAME. } No. 8896.

On motion of W. W. Howe, for complainants in these causes, and suggesting that the defendants, Julius Lisso and John H. Scheen, have refused to obey the order heretofore made in these causes directing them to produce books and papers before F. A. Woolfley, special examiner—

It is ordered that the said Lisso and said Scheen show cause before this court, on the 15th May, 1880, at 11 a. m., why they should not be each punished for contempt or why such — or further order should not be made as may be just.

Marshal's Return.

Received April 28th, 1880, by the U. S. marshal, and on the 5th day of May, 1880, I served true copies of the within rule and order on the within-named defendants in the following manner, to wit, on Julius Lisso personally and on John H. Scheen person-
51 ally, each in the town of Coushatta, Red River Par., La., 560 miles from New Orleans.

May 10th, '80.

JESSE WHARTON,
D'y U. S. Marshal.

Copy of Petition and Schedule of Surrender. Filed May 29th, 1880.

LISSO & SCHEEN *vs.* THEIR CREDITORS.

To the Hon. J. L. Logan, judge of the 10th judicial district court of Louisiana for the parish of Red River:

Julius Lisso and J. Henry Scheen, residents in your said parish, heretofore partners in trade composing the commercial firm and partnership of Lisso and Scheen, at Coushatta, in your said parish, respectfully represent that, on or about the 7th day of June, 1877, they contracted and entered into the said commercial partnership and conducted same until about Dec'b'r, 1878.

That the business of said firm was carried on and the stocks of goods and merchandize kept in store and on sale by them were, for the most part, *were* principally purchased by them at and in
52 the city of New Orleans, and that the cotton which they purchased and acquired in the course of their business was ship- by them to and sold for their firm account in said city of New Orleans in the usual and regular course of their said business — was based upon and was maintained upon the said commercial intercourse by them with their merchants and dealers in said city of New Orleans, upon which they relied for carrying on said business.

Further, they represent that from about July to some time in Dec'b'r, 1878, their said commercial intercourse and exchange with the said city of New Orleans was interrupted and suspended by the enactment and enforcement of local quarantine laws and regulations in this portion of your said State against all intercourse with the said city of New Orleans to prevent the introduction and spread here of the yellow-fever epidemic th*ere* prevailing in said city; that during said period their business and intercourse was absolutely cut off and prevented in the usual channel; that they were forced, in order to replenish their stocks on sale and to continue their said business, to make purchases at a great sacrifice and loss to them and their said business in the cities of New York, Boston, St. Louis,
53 and other Northern markets; that in th*ere* purchases they were in many way- unfortunate, and experienced heavy losses from the high rate of freights they had to pay, the high prices that prevailed at the time, and from the delays in the receipt of goods at their place of sale and business.

Further, that — interval aforesaid they were forced to ship their cotton out of the regular and usual channel and to the city of Shreveport for sale to meet *to meet* current maturities and liabilities and at a heavy loss to them and their said firm in the high rate of freight which they had to pay in it and in the extreme low prices which they were forced to accept. Further, they represent that in November and December, 1878, before they were able to resume their commercial intercourse with the city of New Orleans, their usual and established channel of business, a large number and amount of their creditors ill-advisedly and wrongfully brought numerous suits against them in the district and parish courts of your said parish on many large claims before their maturity, and in said suits wrongfully and illegally caused writs of attachment to
54 be issued and executed against them and their property, and thereunder caused to be seized all their stocks and goods on sale and thereby forced and compelled them to discontinue their said business; that at that time they were able to have met all their liabilities at maturities had they been permitted to continue in their business in their usual way.

Further, they represent that at that time they had numerous large and valuable assets in accounts, liens, judgments, notes, rights, and credits out in the hands and against their customers which they made in the usual and regular course of their business and which they could have been able to collect in money and cotton during the

season of 1878 had they been permitted to continue their business in their usual way; that by the effect of the execution of said writs of attachments and the seizures thereunder of their stocks of goods in trade and on sale and by the effect of the necessary discont-uance and suspension of their commercial business resulting therefrom they were prevented from collecting their said assets, accounts, notes, judgments, liens, rights, and credits outstanding against
55 their customers, and that they sustained loss and injury resulting therefrom in very large amounts; that from these reverses and misfortunes hereinbefore enumerated they have become insolvent and unable to pay or meet their liabilities.

That their insolvency has resulted from the aforesaid unfor-seen and overpowering reverses, misfortunes, and losses in their commercial and individual business and affairs, and from which they are now unable to pay their debts, individual or partnership. They aver that they desire to take, claim, and have the benefit of the insolvent law of your said State and to make a surrender of all their effects and property, rights, and interests for the benefit of all their creditors. Pursuant to this desire they herewith present the annexed and subjoined full, complete, and perfect schedule of all their assets, both individual and partnership, together with a full list of their creditors, individual & partnership. They aver that recently they have been ruled in the United States circuit court at the city of New Orleans to produce their books and papers pertaining to their commercial business, a copy of which is hereto annexed as part hereof, and — obedience thereto they have been compelled to
56 send their books and papers called for to said city of New Orleans to respond to said rule, and that the aforesaid and annexed schedule and list of their creditors is as full and perfect and complete as they are able to make or render in the absence of their said books and papers in the city of New Orleans.

The said schedule and said list of creditors, with their names, place of residence, and amounts due them respectively, hereunto annexed, are herewith presented as part of their petition and proceedings. They aver that they are entitled by law to the full benefit and protection of the insolvent laws of your said State and to tender and make this surrender *cessio bonorum* for the benefit of all their creditors, and have same accepted for all their creditors. Therefore they pray that this their application and petition for a surrender and to make a *cessio bonorum* may be filed in your said court, and for an order of your said court at chambers or in open court accepting the same for the benefit of all their creditors, and that a *curator ad hoc* be named and appointed to represent their absent creditors, and that a notary public be named and commissioned and ordered
57 to convoke and hold a meeting of their creditors to elect a syndic to the said insolvent estate hereby surrendered; that a day be appointed for a meeting of their said creditors after due and legal notice to them; that a provisional syndic be named to take charge of and keep the property hereby surrendered; that the said estate be duly and legally administered for the benefit of all their creditors and according — law; and that in the meantime

all proceedings against petitioners' personal property may be staid; and they further pray for all orders, decrees, and proceedings necessary in these premises and for general relief.

(Signed) J. F. PIERSON,
(") L. B. WATKINS,
Att'ys for Plaintiffs.

STATE OF LOUISIANA, *Parish of Red River:*

We, Julius Lisso and J. Henry Scheen, each for himself individually and both for the commercial firm and partnership of Lisso and Scheen, do solemnly swear that the above schedule contains a correct and faithful statement of all the property I possess
58 individually or for the firm of Lisso and Scheen, as fully and completely as we are able to make the same, either movable or immovable, or in other rights or claims, except, however, those articles which the law authorizes me or us to keep; and I and we do further solemnly swear that the schedule contains a correct and faithful statement of my or our active and passive debts as full as we are able to give, and that the petition truly alleges the causes of the losses I or we have experienced in my or our affairs which we are not able to precisely *to* estimate, and that I nor we have neither directly or indirectly diverted any of our or my property to the injury of my or our creditors, so help me God.

(Signed) JULIUS LISSO.
" J. H. SCHEEN.

Received and sworn to before me, at Coushatta, on this 8th day of May, 1880, in chambers.

(Signed) J. L. LOGAN,
Judge 10th Judicial Dist.

STATE OF LOUISIANA, *Parish of Red River:*

In the 10th Judicial District Court.

LISSO and SCHEEN *et als. vs.* THEIR CREDITORS.

59 All the formalities of the law having been complied with, a cession of the insolvents, Julius Lisso, J. Henry Scheen, and the firm of Lisso and Scheen, be, and the same is hereby, accepted for the benefit of their creditors, individually, and said firm, let a meeting of the creditors of the said insolvents be held before D. H. Hayes, notary public, on the 14th day of June, 1880, and let J. D. Roach, Esq., be appointed to represent the absent creditors of the said insolvents, and in the meantime let all the proceedings against the person and property of Julius Lisso, J. Henry Scheen, and Lisso and Scheen, insolvents herein, be staid until the further order of this court, and let George W. Cawthorn be appointed provisional syndic to retain the property of the said insolvents until the further orders of this court.

Thus done and signed, at Chambers, at Coushatta, on this the 8th day of May, 1880.

(Signed) J. L. LOGAN,
Judge 10th Jud. Dist., La.

STATE OF LA., *Parish Red River:*

I do hereby certify the above and foregoing is a true and
60 correct copy of the original petition, affidavit, and order of court this day filed and of record in my office.

Given under my hand and seal of office, at Coushatta, on this the 8th day of May, A. D. 1880.

[CLERK'S SEAL.] L. M. HOWARD,
Cl'k District Court.

Amended and Suppl't Bill. Filed June 8th, 1882.

U. S. Circuit Court, Eastern District of Louisiana.

HORACE B. CLAFLIN, &c., *vs.* JULIUS LISSO *et al.* } 8896.

HENRY BERNHEIM *et al.* *vs.* SAME. } 8897.

SIMON AUGUST *et al.* *vs.* SAME. } 8898.

CHARLES F. CLAFLIN *et al.* *vs.* SAME. } 8899.

To the judges of the circuit court of the U. S. for the 5th circuit and E. district of Louisiana:

61 The complainants in these four consolidated causes, and all of them, with leave of the court bring and file this their amended and supplemental bill, and thereupon they complain and say:

First. That your orators reiterate all the allegations made by them in their four several original bills filed herein November 13th, 1879.

Second. They aver that on or about the — day of April, 1879, said defendant, Mistress Scheen, filed a suit, No. 203, in the district court for the parish of Red River, wherein she averred that her said husband was indebted in certain sums, including the same sum set forth as the consideration of the so-called *dations en paiement* attacked by complainant herein, but the said item was rejected by the court and no appeal taken, and the judgment rendered in said cause was as to the amount decreed in her favor null and void, as fraudulent and collusive and for want of any due execution according to the laws of Louisiana, and has been recently so declared and decreed by the supreme court of Louisiana in the cause, No. — of its
62 docket, of Chaffe against said Mrs. Scheen, and the said *dation* has also been by the same court declared void in same cause, as by the said record will more fully appear.

Third. They aver that Christopher Chaffe, Jr., of the city of New Orleans, who is a citizen of Louisiana, was, in or about the month of ——, 1880, elected syndic of said Lisso and Scheen, who had gone into State insolvency in May, 1880, and makes some claim to the property which is sought by complainants to be subjected to their claims herein; they aver that they, the complainants, have never been or made themselves in anywise parties to said insolvency and are not bound by any proceedings therein, not being citizens of Louisiana and their claims having arisen from contracts made in other States than Louisiana, and they are still such citizens; that said insolvent proceedings and the doings of said syndic therein should in nowise impair or effect their rights and demands herein, and that any claims said syndic may have, if they exist, are subordinate to those of these complainants.

63 Fourth. They show that in the cause No. 9069 of this court by order of the court said Chaffe, syndic, has been made party defendant and has filed a cross-bill with reference to the same property in question herein and other property, and it is but just, right, and in accordance with equity that he should be made party hereto, and that the causes should, if the court deem proper, be consolidated in order that all the issues as to all the claimants may be decreed and settled.

Your complainants aver that that they have the first claim, lien, and privilege on said property, as set forth in their bills, respectively.

To the end, therefore, that justice may be done in the premises they pray that said Christopher Chaffe, Jr., as syndic of Lisso and Scheen, may be duly made party hereto and brought in by proper writ of subpœna; that the property pursued and claimed herein may be applied by preference to complainants' claims, the transfers thereof being set aside; that justice and equity may be administered as heretofore and herein prayed, and for such other and

64 further decrees and orders — may be just.

KENNARD, HOWE & PRENTISS,
Solicitors for Complainants.

Order.

Let this amended and supplemental bill be filed and C. Chaffe, Jr., syndic, be made party hereto.

June 8th, 1882.

EDWARD C. BILLINGS, *Judge.*

Supplemental Bill. Filed Jan'y 23d, 1883.

U. S. Circuit Court.

HORACE B. CLAFLIN *et al.* *vs.* JULIUS LISSO *et al.* } Nos. 8896, '7, '8, & '9. Consolidated.

To the judges of said court:

The supplemental and amended bill of complaint, with leave of the court filed, respectfully shows:

Your orator- complain and say that the defendant, Nancy A. Bradley, wife of John H. Scheen, set up some claim by way of mortgage on the property described in the conveyance from her husband to her of Nov'r 23, 1878, and which act or *dation* is annulled by the decree herein of January 22d, 1883. Your orators aver that her said mortgage claims are null and illegal, and if they have any existence (which is denied) they are subordinate to
65 the just claims and prefe[illegible]ences of your orators herein.

They pray that said Mrs. Nancy A. Bradley, wife of said John H. Scheen, and her said husband may have notice hereof through their solicitor of record, and that her said mortgage claims may be declared void as to the demands and preference of your orator, or, in any event, may be subordinated thereto, and for all general relief.

KENNARD, HOWE & PRENTISS,
Solic-tors for Compl'ts.

Order.

Let this supplement and amended bill be filed.
Jan'y 23rd, 1883.

EDWARD C. BILLINGS, *Judge.*

Plea in Bar. Filed in Cons. Suits No. 8896, '7, '8, & '9 *May* 1, 1883.

U. S. Circuit Court, District of Louisiana.

HORACE B. CLAFLIN *et al.*
vs.
JULIUS LISSO *et al.* } No. 9069.

The joint and several plea of Nancy A. Bradley, wife of John H. Scheen, and John H. Scheen, her husband, defendants, to the
66 supplemental bill of complaint of Horace B. Claflin, Edward E. Eams, Horace B. Fairchild, William S. Dunn, Dexter W. Force, Daniel Robinson, and John Claflin, complainants.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' bill of complaint mentioned and contained to be true in such sort, manner, and form as the same are therein set forth and alleged, except that which may be hereinafter admitted, for plea to the said supplemental bill say that the matters presented in the original bill have been finally adjudicated upon and determined by judgment of this hon. court between these parties.

Respondents further plead that the matter set up in the supplemental bill of complainants is new, original, and contradictory with the averments in the original bill of complaint and cannot be supplementary thereto.

Further, that respondents are domiciled in the parish of Red River, in the northern district of Louisiana, and without the jurisdiction of this court, and that all actions brought against them must be brought in said northern district of Louisiana; thes- proceed-

67 ings, being entirely new and original and not supplementary, must be brought in the court having jurisdiction over said district.

Respondent, Nancy A. Bradley, wife of John H. Scheen, admits that she is the mortgage creditor of John H. Scheen; but the said John H. Scheen, together with Julius Lisso and the firm of Lisso and Scheen, have made a voluntary surrender of their property to their creditors through the 10th judicial district court for the parish of Red River, and that said court is and was seized of jurisdiction before the proceedings herein.

Respondents allege that the said 10th judicial district court, in due course of law, has appointed Christopher Chaffe, Jr., syndic of the creditors of the said John H. Scheen and Julius Lisso and the firm of Lisso and Scheen, and that all the property of said insolvents is in the possession and under the control of said syndic, Chaffe, and that he will sell the same for the benefit of all the creditors of said insolvents, among whom is your respondent, Nancy A. Bradley, wife of John H. Scheen, in accordance with law and the orders of the 10th judicial district court, and that the validity of your respondent's claim will have to be determined contradictorily with the said Chaffe, syndic, and all of said creditors of the
68 insolvents before the 10th judicial district court, which is already seized of jurisdiction over this whole subject-matter, and was seized of the same before this bill was filed.

And these defendants plead the foregoing matters in bar to the said complainants' supplemental bill of complaint, and pray the judgment of this hon. court whether they should be compelled to make any further answer to the said bill, and pray to be hence dismissed with all reasonable costs and charges in their behalf most wrongfully sustained.

J. C. EGAN,
Solicitor for Def'ts Mentioned in the Foregoing Plea.

I hereby certify that, in my opinion, the foregoing plea is well founded in point of law.

J. C. EGAN,
Solicitor for Def'ts Mentioned in the Foregoing Plea.

Nancy A. Bradley, wife of John H. Scheen, and John H. Scheen, her husband, being duly sworn, say that they are the respondents mentioned in the foregoing plea, and that said plea is not interposed for delay and is true in point of fact.

NANCY A. SCHEEN.
J. H. SCHEEN.

69 Sworn and subscribed before me on this the 6th day of April, 1883.

[CLERK'S SEAL.]

L. M. HOWARD,
Clerk District Court.

Order. Plea of Mrs. Scheen, Fixed for Dec. 20th, 1883. Ent'd & Filed Dec. 12th, 1883.

U. S. Circuit Court.

H. B. CLAFLIN *et al.* / *vs.* / JULIUS LISSO *et als.* } 4 Cases Consolidated. Nos. 8896, 8897, 8898, & 8899.

On motion of Kennard, Howe and Prentiss, for complainants, ordered that the pleas herein of Mrs. Scheen & *als.* be fixed for Dec. 20th, 1883, and that the defendants be notified hereof.

Decree Overruling Plea of John H. Scheen & Wife. Ent'd & Filed Dec. 26th, 1883.

U. S. Circuit Court.

H. B. CLAFLIN *et al.* / *vs.* / JULIUS LISSO *et al.* } Nos. 8896, '7, '8, & '9. (4 Consolidated Causes.)

These consolidated causes came on to be heard on the joint and several plea of John H. Scheen and Nancy A. Bradley, his
70 wife, filed April 13th, 1883, and were argued by counsel. In consideration whereof it is now ordered, adjudged, and decreed that said plea be in all respects overruled, with costs, and that the defendants, John H. Scheen and Nancy A. Bradley, his wife, pay costs and answer by rule day in February, 1884.

In open court.

DON A. PARDEE, *Judge.*

Dec. 26th, 1883.

Seperate Answer of Nancy A. Bradley, Wife of John H. Scheen, to Supplemental Bill of Jan'y 23rd, 1883. Filed April 7th, 1884.

In the Circuit Court of the United States for the Eastern District of Louisiana. In Equity.

H. B. CLAFLIN *et al.* *vs.* JULIUS LISSO *et als.*	No. 8896.	Consolidated.
H. BERNHEIM *et al.* *vs.* JULIUS LISSO *et als.*	No. 8897.	
SIMON AUGUST *et al.* *vs.* JULIUS LISSO *et als.*	No. 8898.	
CHARLES F. CLAFLIN *vs.* JULIUS LISSO *et als.*	No. 8899.	

The separate answer of Nancy A. Bradley, wife of John H.
71 Scheen, to the supplemental and amended bill of complaint filed herein by the complainants in the above-entitled consolidated causes on the 23rd of January, 1883.

This defendant, answering seperately from her said husband, pursuant to an order of this honorable court, dated March —, 1884, authorizing her so to do, now and at all times hereafter saving and reserving to herself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in said bill contained, for answer thereto says—

That it is true, as stated in the said bill, that she sets up a claim by way of mortgage on the property mentioned in said bill, but that it is not true, as stated in the said bill, that her said claim is null, void, or illegal, and that it is not true, as stated in said bill, that her said claims, the existence of which is denied by said bill and asserted by her, are subordinate to the claims and preferences asserted by said complainants in their bills of complaint herein. On the contrary, this defendant avers that her said claims are lawful
72 and valid claims, superior in rank to and entitled to priority and preference of payment out of all the proceeds of the property mentioned over the said claims of the said complainants, all and singular.

This defendant says that she was lawfully married to her said husband, John H. Scheen, in the parish of Bienville, Louisiana, in the year 1857, and resided with him there until 1875, when they removed to the parish of Red River, and that at all times since then the marital domicile has been in said parish and State; that she is

the only child of Hampton Bradley and Susan Bradley, the latter of whom is now dead; that after her marriage, in 1857, with the said John H. Scheen her father and mother made to her at different times divers valuable donations, which gifts became and were, under the law of Louisiana, her seperate paraphernal property; that a large portion of her seperate paraphernal estate so acquired by gift from her said parents came into the hands of her said husband and was at divers times by him expended for his own account and applied to his own uses, and item-
ized statement and account of which she annexes to and
73 *and* makes part of this her answer, which statement she avers
to be correct and true in all respects; that under the laws of Louisiana her said husband became and was and is, by reason of the premises, indebted and accountable to her for her said paraphernal property and funds so received and used by him, and that he has never repaid or reimbursed her for any of her said paraphernal property or funds so used and expended by him; that, as shown by said itemized statement, her said husband became so indebted and accountable to her on the account aforesaid in the sum of twenty-nine thousand three hundred and twenty-one dollars and twenty-three cents ($29,321.23), and that he is still indebted to her for the whole of said sum, with interest; that, as shown by said itemized statement of said indebtedness of her said husband to her was incurred in and prior to the year 1875, and she avers that it was in all respects a *bona fide*, valid, and lawful indebtedness, and existed prior to and at the time of the filing of the several original bills of
complaint in these consolidated causes, and prior to any of
74 the transactions of any — said complainants with her said
husband stated in any of said bills; and this defendant says that, to secure the reimbursement and repayment to her by her said husband of the said funds of her paraphernal estate so as aforesaid received and used by him, she was and is entitled by the laws of Louisiana to a legal mortgage on all real and immovable property owned by him at any time since the said paraphernal funds came into his hands, and she avers that all of said funds were, as set forth in the itemized statement filed herewith, so received and used by him in or prior to the year 1875.

And this defendant says that, on or about the 30th of April, 1879, she caused to be recorded, in due and legal form, in the mortgage books of the offices of the recorders of the parishes of Red River, and on 6th June, 1879, in the parish of Bienville, the evidence of said indebtedness of her said husband to her for and on account of her said paraphernal funds, and that by the laws of Louisiana her said legal mortgage became and was effective against all of the
complainants herein and all other third persons as a valid
75 existing mortgage lien and incumbrance on all of the real
and immovable property of her said husband in said parishes of Red River and Bienville from the said date of inscription thereof as aforesaid.

And this defendant says that, with a view to the enforcement according to law of said paraphernal claims and mortgage lien against

her said husband and the real and immovable property effected as aforesaid by her said legal mortgage, she instituted suit on the 16th of February, 1883, in the tenth judicial district court of the State of Louisiana for the parish of Red River, a court of general and competent jurisdiction and the court of the domicile of her said husband; that in her petition filed in said suit she averred and showed, in substance, that her said husband, being indebted to her as aforesaid, became financially embarras-ed in 1879, from which embarrassments he was unable to extricate himself, and that about May, 1880, her said husband and the commercial firm of Lisso and Scheen, of which he was a member, made a *cessio bonorum* under the insolvent laws of the State and ceded and surrendered to their cred-
76 itors all of their property, rights, and credits, including the real estate and property in said parishes of Red River and Bienville, effected as aforesaid by said legal mortgage in favor of this defendant, which was averred in said petition to be a first mortgage upon all of said immovable property.

That in said insolvent proceedings in said district court for the tenth judicial district of Louisiana for the parish of Red River Chris. Chaffe, Jr., of the city of New Orleans, was about July, 1880, elected and subsequently commissioned and qualified as definitive syndic of said insolvent estates, and now has under his control and administration the said real and immovable property surrendered by her said husband, on which she has her legal mortgage as aforesaid; that her said husband has not been discharged from his liabilities and is still insolvent, and that the condition of his financial affairs was such as to require the petitioner (this defendant) to sue for the restitution and reimbursement to her of her said seperate paraphernal rights and claims and to take upon herself the seperate administration of her paraphernalia, free from the interfer-
77 ence of her said husband; that the financial embarras-ments and insolvency of her said husband are such as to entitle her to a dissolution of the community of acque-ts and gains heretofore existing between them, that she in the future may have the benefit of her seperate earnings.

The said petition further averred that the real property surrendered by her said husband was surrendered subject to her said legal first mortgage, duly recorded in the parishes of Red River and Bienville in 1879, and that said property is still unsold and under administration by said Chris. Chaffee, syndic, in said tenth judicial district court for the parish of Red River, and that by virtue of her said legal first mortgage she is by law entitled to be be paid by preference out of the proceeds of said property, and to have the same sold according to law to pay and satisfy her said debt and mortgage.

Wherefore she prayed, by her said petition, to be authorized by the court to bring said suit, which authorization was duly granted, and she further prayed for services and citation on John H.
78 Scheen, her said husband, and on said Chris. Chaffe, Jr., syndic, and, after final hearing had, for judgment finally dissolving the community of acque-ts and gains between her and her said hus-

band and decreeing her to have the seperate administration of her paraphernal property, rights, and claims free from the control of her said husband, and for judgment in her favor recognizing her said seperate rights and claims, and that she recover the sum of twenty-nine thousand three hundred and twenty-one dollars and twenty-three cents ($29,321.23), with five per cent. *per cent.* per annum interest thereon from judicial demand, for the restitution and reimbursements to her of her paraphernal property alienated, used, and expended by her said husband, and that the legal mortgage in her favor on all of the real and immovable property ceded and surrendered by her said husband and now in the hands and under the administration of the said Chris. Chaffe, Jr., syndic, as aforesaid, be recognized and enforced; that her said claims against her said husband be placed upon the bilou and schedule of the acknowl-
79 edged debts of the insolvent estate of her said husband, with the rank of legal and first mortgage on all of the real estate ceded by her said husband, in the hands of the said syndic, situated in the parishes of Red River and Bienville, and that her said debt be paid to her *in concusso*, in due course of administration, out of the proceeds of said property by priority and preference over all other creditors.

This defendants says that after due services and citation or due acceptance thereof judgment by default was in due course entered in her favor against her said husband, and that on the 5th of July, 1883, the said Chris. Chaffe, Jr., syndic, as aforesaid, filed his answer to said petition, wherein, after denying generally the allegations of said petition, except as thereinafter admitted, the said respondent admits the financial embarrassment of said J. H. Scheen, as alleged in the petition, and that Lisso and Scheen and the individual members of the firm made a *cessio bonorum* in 1880, and that said respondent was duly elected syndic of said insolvent estates and is now administering the property surrendered; that said Scheen has not been discharged, and that his insolvent estate is still un-
80 settled. He specially denies any indebtedness of the said John H. Scheen to his said wife; denies the donations set up in her petition and statement, and avers if any such donations were attempted or contemplated the same were and are null for want of proper and legal form and execution; denies that any legal mortgage exists in favor of the said Mrs. Scheen for any sum on any of the property surrendered, or otherwise, and says that if she ever had a legal mortgage the same has no existence or effect for want of due and seasonable evidence of the registry thereof.

This defendant hereby reiterates and reasserts the truth of all and singular the averments as aforesaid of her said petition in said State court, and says that the statement and account hereto annexed as part of this answer is an exact copy of the statement and account annexed to and made part of the said petition in said State court, and is true in every particular.

And this defendant says that upon the issues joined, as above set forth, in said suit in said tenth judicial district court of the State of Louisiana for the parish of Red River the said suit was regularly

tried, contradictorily with said Chris. Chaffe, syndic, and
81 her said husband, upon joinder of issue, by default, as aforesaid, and that a final judgment was rendered and signed thereon by the said district court on the 7th of December, 1883, in the words and figures following, to wit:

"In this cause, by reason of the law and the evidence being in favor of the plaintiff, Nancy A. Scheen, and against the defendant, John H. Scheen, and C. Chaffe, Jr., syndic, it is therefore ordered, adjudged, and decreed that the community of acque-ts and gains heretofore existing between the said plaintiff, wife, and the said J. H. Scheen be, and the same is hereby, dissolved and terminated.

It is further ordered that said plaintiff in future do have the sole and exclusive administration of her own seperate paraphernal property, rights, and claims free from the control and influence of her said husband.

It is further ordered, adjudged, and decreed that the debt and claim of the said plaintiff against the defendant, C. Chaffe, Jr., syndic of the insolvent estate of the insolvent defendant, J. H. Scheen, for the sum of twenty-nine thousand three hundred
82 and twenty-one dollars and twenty-three cents ($29,321.23), with five per centum per annum interest thereon from judicial demand, viz., the 16th day of February, 1883, be recognized and enforced and placed upon the schedule and bilou of the acknowledged debts of said insolvent estate, with recognition of the rank of a legal mortgage from the 30th day of April, 1879, upon all the real estate surrendered or ceded by the defendant, J. H. Scheen, either individually or as a member or partner of the firm of Lisso and Scheen, in the parishes of Red River and Bienville, with leave to said plaintiff to enforce said mortgage in due course of law and the administration of said insolvent estates of J. H. Scheen and Lisso and Scheen by the said C. Chaffe, Jr., syndic, and *in concurro* with the other creditors of said insolvent estates.

It is further ordered that the defendants do pay the costs of this suit."

And this defendant further says that from said final judgment of said court the said Chris. Chaffee, Jr., syndic, took an appeal to the supreme court of Louisiana, and that the said supreme court
83 has, upon consideration of said appeal, affirmed said judgment in all respects, except in so far as it recognized the legal mortgage claimed by this defendant on lands of said insolvent situate in the parish of Bienville, in which particulars the said judgment of the district court has been reversed and a judgment of nonsuit rendered on the ground that there was no proof in the record of appeal to show that the evidence of said mortgage claim had been inscribed in the mortgage books of the recorder of said parish of Bienville, as averred in the petition of this defendant in said suit, but the right to make such proof in any proper proceeding thereafter was expressly reserved to this defendant by the opinion and decree of said supreme court, upon the making of which proof this defendant is entitled, upon the principles announced in said opinion and decree, to the judicial recognition and

enforcement of her said legal mortgage upon all of the lands of said insolvent's estate situate in said parish of Bienville, and affecting from the date of inscription the said lands in her favor for the security of her said paraphernal claims and the payment
84 thereof against all other creditors of her said insolvent husband not secured by mortgage entitled by priority of inscription in said parish to priority of rank over her said mortgage. And this defendant says that the evidence of her said legal mortgage claim was duly recorded in the mortgage books of the recorder of said parish of Bienville, in the manner and form required by law, at or about the time hereinbefore stated, to wit, the 30th of June, 1879, and that, upon due proof thereof being made upon the trial of this cause, she is entitled to have her said legal mortgage recognized by degree of this honorable court as an existing mortgage lien effecting all of the said real property or her said husband's insolvent estate situate in said parish of Bienville and effective against the complainants herein and all other creditors of her said husband from the date of its inscription as aforesaid.

And as to so much of said supplemental and amended bill of complaint of complainants herein as says that the said mortgage claims of this defendant are subordinate to the just claims and preference of said complainants this defendant says that all
85 and singular the said complainants were at and prior to the time of the filing of their respective original bills of complaint herein, on the 13th of November, 1879, mere ordinary creditors at large of the said commercial firm of Lisso and Scheen, of which her said husband was a partner; that none of the real estate described in said bills was partnership property of said commercial firm, but that the individual members were joint owners of much of said property as stood in the partnership name, and that such property was not assets of said commercial firm, but the respective interests of the individual members of the partnership therein were individual assets of said members, respectively, and that as between ordinary individual creditors of said partners and ordinary partnership creditors the individual creditors were and are entitled by law to be paid out of the proceeds of said real estate in preference to the partnership creditors, and that this defendant, as an individual creditor of her said husband as aforesaid, is by law entitled to be paid out of the proceeds of the real and immovable prop-
86 erty of his said insolvent estate, irrespective of her said legal mortgage thereon, by priority over and in preference to any and all of said complainants; also, as creditors of the partnership of Lisso and Scheen, are entitled to be paid out of the partnership assets of said firm in preference to ordinary creditors of the individual members of said firm, but whose claims upon the individual property of the members of said firm are subordinated by law and in equity to the claims of the ordinary creditors of the individual members of the firm.

And further this defendant says that at the time of the filing of said several original bills of complaint, on the said 13th of November, 1879, none of the said ordinary claims at large of said com-

plainants against the said partnership in their said respective bills set forth had been reduced to judgment; and this defendant says that upon the face of all of said several bills it appears that the sole ground therein stated or averred upon which the jurisdiction of this court in equity to entertain said several bills could be
87 asserted or maintained was the averment in each of said bills made of the existence of an attachment lien on the property of the defendants described in said bills, which said lien was averred in said several bills to have arisen and to exist under and by virtue of several levies alleged in said bills to have been made under several writs of attachments issued in several suits at law which had, prior to the filing of said bills in equity, be*ing* instituted by the said several complainants in a court of the State of Louisiana, and which had been subsequently removed into this honorable court and entered upon the docket thereof on the law side under the respective numbers 8880, 8881, 8882, and 8883, and which said suits at — are respectively referred to by the said complainants and set forth in their respective bills in equity originally filed in this court under the respective numbers 8896, 8897, 8898, and 8899; and this defendant says that after the filing of the said several bills in equity on the said 13th of November, 1879, to wit, on the first of June, 1880, judgments were rendered by this court in all of said actions at law referred to and set forth in said bills, whereby the attachments in each and all of said actions at law were dissolved; and this
88 defendant says that by effect of said several judgments at law the said complainants in said several suits in equity were and are precluded from claiming that any attachment lien or liens exists or exist in their favor on the property described in their respective bills or that any such attachment liens or liens lawfully existed in their favor at the time of the filing as aforesaid of their said respective bills in equity or that there really and lawfully existed at the time of the filing of their said bills or thereafter any valid or sufficient ground of jurisdiction in equity to warrant this court in entertaining any of said bills for any of the purposes stated in any of them, and that for the reasons aforesaid it is apparent upon the face of the proceeding in said actions at law and suits in equity, extant and of record in this court, that this court was and is without jurisdiction in equity to entertain any of said several bills for any of the purposes therein stated, and that this defendant hopes she may have the same benefit of this defence as if she had set up said several judgments at law by way of pleas in bar to said
89 bills or to further proceedings in equity thereunder after the rendition of said judgments at law.

And this defendant says that after said writs of attachment were dissolved as aforesaid by said judgments at law on the 1st of June, 1880, the defendants in said actions, being in the actual possession of the said property described in said bills, lawfully surrendered the same for the benefit of all their creditors, in the month of July, 1880, to the said tenth judicial district court for the parish of Red River, the court of their domicile, vested by the laws of the State of Louisiana with general jurisdiction

over their persons and their property, and the said surrender was by said court accepted for the benefit of all the creditors of the said commercial firm of Lisso and Scheen and of the members of said firm, Julius Lisso and John H. Scheen, under and in conformity to the insolvent laws of the State of Louisiana, and that thereafter the said Chris. Chaffe, Jr., was duly elected definitive syndic of the said insolvent estates and was duly qualified and commissioned as such, and was by said court of competent
90 jurisdiction put into actual possession and control, as an officer of said court, of all the property of said insolvent estates, including all of the property described in said several bills of complaint of complainants herein, and that the said syndic has from that time hitherto remained and now is in lawful possession of all of said property as an officer of said court and under its orders; and this defendant says that by reason of the premises it became and was imperatively necessary for her to assert, as she has asserted, in the manner and form hereinbefore stated, her said paraphernal claims and mortgages upon the said property so in the actual custody and under the control and administration of said State court; and she says that the said judgments of the said tenth judicial district court of the State of Louisiana for the parish of Red River and of said supreme court of Louisiana in her favor in her said suits are, as she is advised, entitled to be regarded by the court as judgments of courts of competent jurisdiction, operative and affective in her favor and binding upon
91 the persons whom and upon the property which they purport to bind, and that the conclusive effect of said judgments cannot be here questioned except upon averment and proof of fraud or collusion in the procuring of said judgments, and this defendant say- the proceedings in said suit were in all respects *bona fide* and regular; that the paraphernal claims set up by her in said suit against her said husband and the said syndic of his creditors are honest and valid claims and were fully and fairly sustained by the evidence adduced in their support to the satisfaction alike of the said district and supreme courts, and that the judgments of said court- sustaining her said claims and recognizing her legal mortgage rights were fully warranted by the law and the evidence, and she claims in this court and on this proceeding the full benefit of the said judgments in her favor; and in so far as the said judgment of the supreme court is one of non-suit as to the existence of her said legal mortgage as entitled to effect against third persons as to the said property in the parish of Bienville, she says that upon
92 proof being made, as it will be made on the trial of this cause, of the due inscription of the evidence of her said legal mortgage in the books of the recorder of the said parish of Bienville, the said mortgage will be entitled to recognition and enforcement by the court as having taken effect from the date of its inscription against all of the complainants herein, none of whom has or have averred or stated in any of their several bills of complaint herein that any of them have or claim any mortgage, lien, privilege, or ground of preference in their favor otherwise then in respect of said

several illegal attachments dissolved as aforesaid by said several judgments at law of this honorable court.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith she is by the said bills charged, without this, that there is any other matter, cause, or thing in the said complainants' said bills of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied that is true, to the knowledge or belief of
93 this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this court shall direct, and respectfully prays to be hence dismissed with her costs in this behalf most wrongfully sustained.

NANCY A. SCHEEN.

HENRY B. KELLY, *Of Counsel.*

Personally appeared before the undersigned authority Mrs. Nancy A. Bradley, of the parish of Red River, Louisiana, the defendant named in the above and foregoing answer, wife of John H. Scheen, who, being sworn, says that she has heard the foregoing answer read and knows the contents thereof, and that the same is true of her own knowledge, except as to matters therein stated as of her information and belief, and as to those matters she believes them to be true.

Coushatta, La., March 29th, 1884.

[SEAL.] D. H. HAYES,
Notary Public.

Petition of Mrs. Nancy A. Scheen for Leave to Answer Seperately from Her Husband. Filed April 16th, 1884.

94 In the Circuit Court of the United States for the Eastern District of Louisiana. In Equity.

H. B. CLAFLIN *et al.* *vs.* LISSO AND SCHEEN *et als.* } No. 8896.

H. BERNHEIM *et al.* *vs.* JULIUS LISSO *et als.* } No. 8897.

SIMON AUGUST *et al.* *vs.* JULIUS LISSO *et als.* } No. 8898.

CHARLES F. CLAFLIN *et al.* *vs.* JULIUS LISSO *et als.* } No. 8899.

To the judges of the circuit court of the United States for the eastern district of Louisiana:

The petition of Mistress Nancy A. Bradley, wife of John H. Scheen, defendant—

Respectfully shows that the complainants in the above-entitled causes, consolidated by order of court, have exhibited their supplemental bill against petitioner and her said husband, and that petitioner has appeared thereto; that the said bill is filed in respect of your petitioner's seperate estate and claim against the insolvent estate of her said husband.

95 Petitioner therefore prays that she be allowed to put in her answer to complainants' said bill seperate from her husband.

And your petitioner will ever pray, etc.

HARRY B. KELLY, *Solicitor.*

Let the prayer of the foregoing petition be granted and peti-oner be allowed to put in her answer to said bill of complaint seperate from her husband.

March 19th, 1884.

EDWARD C. BILLINGS, *Judge.*

Cross-Bill of Mrs. Nancy A. Bradley, Wife of John H. Scheen. Filed June 10th, 1884.

In the Circuit — of the United States for the Eastern District of Louisiana. In Equity.

H. B. CLAFLIN *et al.* *vs.* JULIUS LISSO *et als.* } No. 8896.

H. BERNHEIM *et al.* *vs.* JULIUS LISSO *et als.* } No. 8897.

SIMON AUGUST *et al.* *vs.* JULIUS LISSO *et als.* } No. 8898.

C. T. CLAFLIN *et al.* *vs.* JULIUS LISSO *et als.* } No. 8899.

96 To the judges of the circuit court of the United States for the eastern district of Louisiana:

Nancy A. Bradley, wife of John H. Scheen, by her next friend, William B. Somerville, of the city of New Orleans, brings this her cross-bill of complaint against all of the complainants in the bills of complaint in the above entitled and numbered causes named and against her said husband, John H. Scheen, and against Chris. Chaffe, Jr., syndic of the creditors of the commercial firm of Lisso and Scheen and of Julius Lisso and John H. Scheen, defendants named in said bills of complaint.

And thereupon your orator says—

That she was married to her said husband, John H. Scheen, in the parish of Bienville, in the State of Louisiana, in the year 1857,

and resided with him in said parish until the year 1875, when they removed to the parish of Red River, in said State, and that at all times since then their matrimonial domicile has been and now is in said parish of Red River and State of Louisiana; that she is the only child of the marriage of Hampton Bradley
97 and Susan Bradley, of said parish of Bienville and State of Louisiana; that after her marriage, in 1857, as aforesaid, with her said husband, John H. Scheen, her said father and mother made to her at several different times divers valuable donations, which gifts became and were under the law of Louisiana her seperate paraphernal property; that a large portion of her said seperate paraphernal estate so as aforesaid acquired by her by gift from her said parents came into the hands of her said husband and was by him at divers times expended for his account and applied to his own uses, an itemized statement and account of which is hereto filed and made part of this her bill of complaint, and that, by reason of the premises, her said husband became and was and is accountable and indebted to her for and on account of her said seperate paraphernal funds so received and used by him in the sum of twenty-nine thousand three hundred and twenty-one dollars and twenty-three cents ($29,231.23), and that said indebtedness of her said husband
98 to her existed as a *bonna fide*, valid, and lawful indebtedness at and prior to the time of the filing of any of the said several bills of complaints of complainants herein and *and* prior to the time of any of the transactions of any of said complainants with her said husband or with the commercial firm of Lisso and Scheen stated in any of said bills.

And complainants says that to secure the reimbursement and repayment to her by her said husband of the said funds of her seperate paraphernal estate, so as aforesaid received and used by him, she was and is entitled by the laws of Louisiana to a legal mortgage on all real or immovable property owned by him at any time since said paraphernal funds came into his hands, including all the real estate described in the several bills of complaint of complainants herein.

Complainant avers that all of her seperate paraphernal funds for which her said husband is accountable and indebted to her, as set forth in the itemized statement and account thereof herewith filed as a part of this bill, came into the hands of her said husband
99 and were converted to his own use before the filing of the several original bills of complaint of complainants herein, on the 13th of November, 1879, to wit, in or prior to the year, 1875; and your orator says that prior to the filing, as aforesaid, of said original bills of complaint, on the 13th of November, 1879, she had caused to be recorded in manner and form provided by law the evidence of the indebtedness, as aforesaid, of her said husband to her for and on account of her said seperate paraphernal property in the mortgage books of the offices of the recorders of the said parishes of Red River and Bienville, and that the said inscription of mortgage were made in the parish of Red River on the 30th of April, 1879, and in the parish of Bienville on the 6th of June 1879; and your

oratrix says that by effect of said inscription her said legal mortgage became and was operative under the laws of Louisiana as a valid and subsisting mortgage lien and encumbrance from the dates of said inscriptions, respectively, upon all the real estate of her said husband in said parishes, and became and was effective from said dates, respectively, as against all third persons, in-
100 cluding all of the complainants named in the several bills of complaint in the above entitled and numbered causes.

And your orators says that for the purpose of enforcing according to law her said paraphernal claims against her said husband and her said rights of mortgage against the said real estate in the said parishes effected as aforesaid by her said mortgage, she instituted suit on the 16th of February, 1883, in the tenth judicial district court of the State of Louisiana for said parish of Red River, the courts of the domicile of her said husband and of general and competent jurisdiction over his personal property, and that in her petition in said suit she stated, in substance, that her said husband was indebted to her on the account and in the amount hereinbefore stated, and annexed to her said petition a statement of said indebtedness, of which the itemized statement annexed to this bill as a part thereof is an exact copy, and that in her said petition she further stated that her said husband, being indebted to her as aforesaid, in the year 1879 became financially embarrassed and was unable to extricate himself from such embarrassment; that about May, 1880, her said husband and the commercial
101 firm of Lisso and Scheen, of which he was a member, made a *cessio bonorum*, under the State insolvent laws, in a voluntary proceeding for that purpose, in the tenth judicial district court of the State for the parish of Red River, and made a surrender to said court for the benefit of all their creditors of all their property, including the real estate of her said husband in the parishes of Red River and Bienville affected as aforesaid by said legal mortgage, in favor of complainant; that in said insolvent proceedings Chris. Chaffe, Jr., was, in or about July, 1880, elected definitive syndic of said insolvent estates, and was subsequently qualified and commissioned as such, and that he has now under administration and control as such officer of said court all of the said property of her said husband which passed to said creditors by said *cessio bonorum*, including the property affected as aforesaid by her said legal mortgage; that her said husband has not been discharged from his liabilities and is still insolvent, and that the condition of his affairs is such as to require the petitioner (your oratrix) to sue for the
102 restitution and reimbursement to her of said seperate paraphernal rights and claims and to take upon herself the seperate administration of her paraphernalia, free from the interference of her said husband; that his financial embarrassment and insolvency are such as to entitle her to a dissolution of the community of acquests and gains heretofore existing between them, that she in the future may have the benefit of her seperate earnings; that the real property ceded by her said husband to his creditors was surrendered subject to her legal first mortgage thereon, duly recorded

in the parishes of Red River and Bienville in 1879, and that said property is still unsold and under administration by said Chaffe, syndic in said court, and that by virtue of her said legal first mortgage thereon she is by law entitled to be paid by preference out of the proceeds thereof, and to have the same sold according to law to satisfy her said debt and mortgage.

Wherefore she prayed, by her said petition, to be authorized by the court to bring said suit, which authorization was granted, and for services and citation on her said husband and the said syndic, Chaffe, and after final hearing for judgment finally dissolving
103 the community of acqúe-ts and gains between her and her husband and decreeing her to have the seperate administration of her paraphernal property, rights, and claims, free from the control of her said husband, and recognizing her said seperate rights and claims, and that she recover the sum of twenty-nine thousand three hundred and twenty-one dollars and twenty-three cents ($29,321.33), with five per cent. per annum interest thereon from judicial demand, for the restitution and reimbursement to her of her paraphernal property alienated, used, and expended by her said husband, and that the legal mortgage in her favor on all the immovable property ceded by her said husband and now in the hands and under the administration of said Chaffe, syndic, be recognized and enforced; that the said claims against her said husband be placed upon the bilou and schedule of the acknowledged debts of his insolvent estate, with the rank of first mortgage on all the real estate ceded by him, in the hands of said syndic, situate in the parishes of Red River and Bienville, and that her said debt be paid to her *in concurro*, in due course of administration, by priority and preference over all other creditors.

104 And your oratrix says that, after due service of citation or acceptance thereof, judgment by default in said suit was duly entered in her favor against her said husband, and that on the 5th of July, 1883, the said syndic, Chaffe, filed his answer to said petition, wherein, after denying generally the allegations of said petition, except as thereinafter admitted, the said respondent admits the financial embarrassments of said J. H. Scheen, as alleged in the petition, and that a *cessio bonorum* was made in 1880, as alleged, by Lisso and Scheen and the individual members of said firm, and that the respondent was duly elected syndic of said insolvent estates and is now administering the property ceded; that said Scheen has not been discharged, and that his insolvent estate is still unsettled. He specially denies any indebtedness of the said John H. Scheen to his wife (your oratrix), denies the donations set up in her petition and statement, and avers if any such donations were attempted or contemplated that the same were and are null for want of proper and legal form and execution; denies that any legal mortgage
105 exists in favor of your oratrix for any sum on any of the property surrendered or otherwise, and says that if she ever had a legal mortgage the same has no existence or effect for want of due and seasonable registry of the evidence thereof.

Your oratrix hereby reiterates and reasserts all and singular the

averments of her said petition in said suit in said State court, and says that they are correct and true in all respects.

And your oratrix says that upon the issues joined, as above set forth in said suit, trial was regularly had, contradictorily with said Chaffe, syndic, who appeared and answered, as above stated, and with her said husband, with whom issue was joined by the entry against him of a judgment by default as aforesaid, the entry of a judgment by default being tantamount, according to the rules of practice of the State courts of Louisiana, to a joinder of issue in the suit and nothing more.

And your oratrix says that, upon consideration of all the evidence adduced upon the trial of said suit and of the law applicable thereto, and after hearing argument by counsel for your oratrix, the plaintiff, and for the said Chaffe, syndic, representing the creditors
106 of said insolvent estate, the said tenth judicial district court of the State of Louisiana for the parish of Red River rendered, on the 7th of December, 1883, a final judgment in said suit in the words and figures following, to wit:

"In this cause, by reason of law and the evidence being in favor of the plaintiff, Nancy A. Scheen, and against the defendants, John H. Scheen and Chris. Chaffe, Jr., syndic, it is therefore ordered, adjudged, and decreed that the community of acque-ts and gains heretofore existing between the said plaintiff, wife, and the said J. H. Scheen be, and the same is hereby, dissolved and terminated.

It is further ordered that said plaintiff do have in future the sole and exclusive administration of her own seperate property, rights, and claims free from the control and influence of her said husband.

It is further ordered, adjudged, and decreed that the debt and claim of said plaintiff against the defendant, C. Chaffe, Jr., syndic of the insolvent estate of the insolvent defendant, J. H. Scheen, for the sum of twenty-nine thousand three hundred and twenty-one dollars and twenty-three cents ($29,321.23), with five per centum per annum interest thereon from judicial demand, viz., the 16th
107 day of February, 1883, be recognized and enforced and placed upon the schedule and bilou of the acknowledged debts of said insolvent estate, with recognition of the rank of a legal mortgage from the 30th day of April, 1879, upon all the real estate surrendered or ceded by the defendant, J. H. Scheen, either individually or as a member or partner of the firm of Lisso and Scheen, in the parishes of Red River and Bienville, with leave to said plaintiff to enforce said mortgage in due course of law, in the administration of said insolvent estates of J. H. Scheen and Lisso and Scheen by the said C. Chaffe, Jr., syndic, *in concurro* with the other creditors of said insolvent estates."

And your oratrix says that from said final judgment of said district court in her favor the said Chaffee, syndic, appealed to the supreme court of Louisiana, which court, upon consideration of said appeal, affirmed said judgment in all respects, except in so far as it recognized the legal mortgage claimed by your oratrix on the lands of said insolvent estate in the parish of Bienville, in which particular the said judgment was reversed and a judgment of nonsuit as

to said claim rendered, on the ground that there was no evi-
108 dence before the supreme court in the record of appeal to show that the evidence of said mortgage claim had ever been recorded in the books of the recorder of the parish of Bienville, as averred in the petition of your oratrix in said suit, but the right to make such proof in any proper proceeding hereafter is expressly reserved to your oratrix by the opinion and decree of the supreme court in said suits; and your oratrix say- that she will make such proof in the present proceeding, and that thereupon she will be entitled, under the laws of Louisiana and upon the principles enounced by the supreme court of said State in the said opinion and decree, to the judicial recognition by this honorable court of her said legal mortgage as a valid and subsisting mortgage lien *lien* operative upon all the real property of said insolvent estate in the parish of Bienville, and effecting all of said property with said mortgage lien in her favor from the date of the inscription, for the security and payment of her said paraphernal claims against all other creditors of her said insolvent husband not secured by mortgages entitled by priority of inscription in said parish to priority of rank over
109 her said legal mortgage, which was inscribed in the mortgage books of the recorder's office of the parish of Bienville, in the manner and form provided by law, at the time hereinbefore stated, to wit, the seventh day of June, 1879.

And your oratrix says that there is no averment in any of said several bills of complaint in any of said above entitled and numbered causes that any evidence of any mortgage lien or privilege whatever for any sum in favor of any of the complainants named in any of said bills has at any time been inscribed in said mortgage books in the said parishes of Red River or Bienville against any of the property described in said bills or any other property of said insolvent husband.

And your oratrix says that as to so much of the supplemental and amended bill of complaint herein exhibited against her on the 23rd of January, 1883, as pretends that the said mortgage claims of your oratrix are subordinate to the alleged just claims and preferences of said complainants, and prays that her said mortgage claims may be declared void as to the demands and preferences of
110 the said complainants, or, at any rate, may be subordinated thereto, your oratrix respectfully say- that this honorable court should not declare her said mortgage claims to be void; but, on the contrary, and for the reasons and upon the grounds hereinbefore and hereinafter stated, should declare and decree that her said paraphernal claims and legal mortgage rights are entitled to judicial recognition by this court in this proceeding to the full amount thereof hereinbefore stated, and that as to the pretense that her said paraphernal claims and mortgage rights should be subordinated to the claims and alleged rights of preference of said complainants, no ground or reason for so doing is anywhere stated or suggested in any of said several bills of complaint nor in said supplemental and amended bill.

And your oratrix says that at and prior to the time of filing of

the said several original bills of complaint, on the 13th of November, 1879, the said complainants were all and singular mere ordinary creditors at large of the commercial firm of Lisso and Scheen, none of whose claims had been rendered to judgments or were alleged to be secured by any mortgage lien or privilege other
111 than certain pretended attachment liens, which were alleged in and by said several original bills to have arisen and to exist at the time of the filing of said bills and to affect the property described in said bills under and by virtue of certain liens alleged by said complainants in their respective bills to have been made in said property under several writs of attachment issued in several suits at law originally instituted by the complainants in said several bills in a court or courts of the State, and afterwards by them removed into this court and entered upon its docket, on the law side, under the respective numbers, 8880, 8881, 8882, and 8883, and which said several attachment suits are referred to by the complainants, respectively, in their said several original bills in equity under the respective numbers, 8896, 8897, 8898, and 8899. Now, your oratrix says that after the filing as aforesaid of said several original bills in equity in this court on the said 13th of November, 1879, to wit, on the first of June, 1880, judgment- were rendered in all of said action- of law by this honorable court dissolving the attachment in each and all of said actions at law upon
112 which the claim of jurisdiction in equity of this court to entertain said several original bills has been based and predicated; and your oratrix says that by effect and operation of said several judgments at law dissolving said several attachments the said complainants are severally precluded and estopped by the record of said judgments from pretending not only that any right of preference still exists in favor of any of them by virtue of any such attachment lien or privilege upon the property described in their said several bills, but that they are thereby precluded and estopped from saying that any such attachment liens existed lawfully at the time of the filing of their said several bills or prior thereto.

And, further, your oratrix is advised and says that under and by the laws in force in the State of Louisiana when the real estate described in said several bills of complaint as the property of said commercial firm of Lisso and Scheen was acquired, and since real estate acquired in the name of a commercial firm did not become and does not constitute partnership property or assets, but that the individual members of the partnership became joint owners
113 thereof and their individual interests and shares therein became and are property and assets of the parties individually and respectively; and your oratrix is advised and says that under and in accordance with the rules and principles of equity, as administered in courts of chancery in cases of insolvency and the marshalling of liabilities and assets in cases of insolvency of commercial partnership and of the individual members of such partnership, partnership creditors are entitled to preference over creditors of individual partners only upon the assets and property of the partnership, and that the creditors of individual partners are en-

titled to preference over the creditors of the partnership upon the property and assets of the partner who is their individual debtor; and your oratrix says that as the creditor as aforesaid of her said husband, individually, she is entitled to preference and priority of payment out of the proceeds of said real property of said insolvent estate over and above any and all of said complainants, none of whom claim to be creditors of her said husband otherwise than as creditors of the said commercial firm of Lisso and Scheen;
114 and that she is entitled to such priority and preference on this ground independently of the lien and privilege on said real estate in her favor resulting from her legal mortgage and the inscriptions thereof as aforesaid.

And, furthermore, your oratrix says that after said several attachments in said several actions at law were dissolved by judgments therein on the first of June, 1880, as aforesaid, to wit, in July, 1880, the said Julius Lisso and John H. Scheen, the defendants in said action, being in the actual possession, as owners thereof, of the property described in said bills in equity, lawfully surrendered the possession thereof to the tenth judicial district court of the State of Louisiana for the parish of Red River, the court of their domicile, vested with general jurisdiction over their persons and property, and ceded and transferred to the said court, for the benefit of all of their creditors, all of their property, subject to whatever rights of priority or preference their said creditors might, respectively, be entitled to according to law, and that the said cession and surrender was by the said court duly accepted, and that therefore the said C. Chaffe, Jr., was duly elected definitive syndic of said insol-
115 vent estates and qualified and commissioned as such, and the actual possession and lawful control of all the property of said insolvent estates were transferred to him in his said capacity by said court, and that from that time hitherto the said syndic has remained and is now in the actual and lawful administration, possession, and control of all said property as an officer of said court, and subject, in respect of said property, to its orders, judgments, and decrees.

And your oratrix says that, by reason of the premises, it became and was necessary that she should assert, in the manner and form hereinbefore stated, her said paraphernal claims and mortgage rights against her said husband and his insolvent estate before the said court of his domicile, which had assumed actual custody and control of said insolvent estate and of the property affected by her said legal mortgage; and your oratrix is advised and respectfully says that the orders, judgments, and decrees of the said tenth judicial district court for the parish of Red River and of the supreme court of Louisiana in her favor, in her said suit, as hereinbefore
116 stated and set forth, are entitled to judicial recognition by this honorable court in this proceeding as judgments of competent courts between parties and concerning property lawfully subject to their jurisdiction and conclusive and binding upon the persons whom and the property which they purport to bind, and that the conclusive and binding effect, as aforesaid, of said

judgments cannot be deemed or questioned here or before any other tribunal except upon averment and proof, which has not been made in this proceeding, of defect of jurisdiction in the courts which rendered said judgments or of collusion or fraud in the procurement of them; and your oratrix affirms that the proceedings in her said suit were in all respects regular and *bona fide;* that the said claims set up therein against her said husband and his said insolvent estate represented by said syndic were valid and lawful claims and were sustained by the evidence adduced to the satisfaction alike of said supreme court and said district court to the full extent to which they were allowed by said judgment of said supreme court,
117 and she claims in this court and in this proceeding the full benefit of said judgment in her favor; and in so far as the said judgment is one of nonsuit as to the recognition of her rights of mortgage upon said real estate in the parish of Bienville your oratrix says that, although proof of this fact was not made in her said suit in the State courts, the truth is this evidence of her said legal mortgage claim was recorded, in manner and form provided by law, in the office of the recorder of the said parish of Bienville, on the 6th of June, 1879, as hereinbefore stated, and as will be shown on the trial of this cause by the certificate in due form of law of the recorder of said parish; and your oratrix says that by effect of said inscription her said mortgage became and was operative as a valid subsisting mortgage lien and encumbrance on said real estate in favor of your oratrix from the said date of its inscription against all and singular the complainants in said several bills of complaint in said above entitled and numbered causes, none of whom aver in any of their said bills that any of the claims therein set forth are
118 secured by any mortgage lien or privilege of any character inscribed at any time in the office of said recorder of said parish of Bienville.

To the end, therefore, that the said paraphernal claims and mortgage rights of your oratrix may be recognized in this proceeding, and that she may be allowed to enforce them according to law, may it please your honors to decree that the said John H. Scheen and his said insolvent estate is indebted to your oratrix in the said sum so as aforesaid decreed to be due her by the supreme court of Louisiana in her said suit against her said husband and the said syndic, Chris. Chaffe, Jr., to wit, in the sum of twenty-nine thousand three hundred and twenty-one dollars and twenty-three cents ($29,321.23), with five per centum per annum interest thereon from the 16th day of February, 1883, and to decree that at and prior to the time of the surrender in insolvency of her said husband as aforesaid, and at and prior to the time of the filing of the said several original bills of complaint in said consolidated causes, on the 13th November, 1879, a legal mortgage existed under the laws of Louisiana
119 in favor of your oratrix to secure the payment to her of said indebtedness to the amount aforesaid, and that said mortgage affected all the real estate owned by her said husband at and prior to his said surrender in insolvency in the said parishes of Red River and Bienville, and that said legal mortgage took effect

and became operative against all their persons, including the complainants, in said several bills, on all of said real estate in the parish of Red River from the 30th day of April, 1879, and in all of said real estate in the parish of Bienville from the 6th of June, 1879; and to decree that your oratrix is entitled to be paid her said debt, with interest in full, out of the proceeds of said real estate by preference and priority over any and all of the complainants in said several bills, in due course of administration of said insolvent estate in said State court, and that no cause is shown to warrant *to warrant* any interference by this court with said administration on behalf of all or any of said complainants in respect of any of the property described in any of said bills; and that your honors will
120 grant unto your oratrix such other and further relief as the nature of the case may require and to your honors may seem meet.

May it please your honors to grant unto your oratrix writs of subpena, to be addressed to the said complainants, through their solicitor of record, and to the said John H. Scheen, and to the said Chris. Chaffe, Jr., syndic of the creditors of Lisso and Scheen and of Julius Lisso and John H. Scheen, commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to be and appear before this honorable court, and then and there full, true, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to your honors shall seem meet.

HENRY B. KELLY, *Solicitor.*

Detailed Statement and Account Made Part of Answer and Cross-Bill of Mrs. Nancy A. Scheen. Filed June 10th, 1884.

121 J. H. Scheen in ac. with Mrs. M. A. Scheen.

1865.	To proceeds 20 bales cotton given her by her father and used by you	4,000 00
"	To proceeds of 9 bales cotton given her by her father, H. Bradley, and used by you	6,800 00
1866.	To cash from her father, H. Bradley, used by you	800 00
1867.	To gold coin from her parents used by you	1,500 00
1868.	To cash, gold coin, from her parents received and used by you	1,200 00
1873.	To proceeds McCrary plantation, sold by H. Bradley to J. A. Pulley, given her and used by you	3,281 60
1874.	To proceeds of sale of house and lot in Sparta from H. Bradley to Pearce & Edwards, given her & used by you	450 00
1872.	To proceeds of sale of house and lot in Sparta from H. Bradley to R. M. Crossman, given her & used by you	650 00
1874.	To proceeds sale of tract of land from H. Bradley to Andrew Jackson, given to her and used by you	750 00

1871.	To proceeds sale of house and lot in Sparta from H. Bradley to R. B. Love, given her and used by you	650 00
1869.	To proceeds sale of land from H. Bradley to N. M. James, given to her and used by you	315 00
		15,396 60
122	To amount forward	15,396 60
1873.	To proceeds sale of Port Bolivar Landing from H. Bradley to Sam. Reese, on the 18th August, 1871, given to her and used by you	4,800 00
1875.	To proceeds sale 28 bales cotton from H. Bradley, given to her and sold and used by you	1,890 00
1874.	To proceeds of the note and mortgage of B. H. Bates, favor of H. Bradley, of date about July 29, 1871, for $9,364.20, on which there remained a balance of $7,234.63, due in 1874, given to her by H. Bradley and collected by you and used by you in the purchase of the plantation and improvements from H. Bates, in May, 1874	7,234 63
	Balance due by you	$29,321 23

Stipulation and Demurrers on Cross-Bill of Mrs. Nancy A. Bradley, Wife, &c. Filed Dec. 19th, 1885.

U. S. Circuit Court.

CLAFLIN *et al.* *vs.* LISSO *et al.* } Nos. 8896–'9. Four Consolidated Causes.

123 To save time and expense to both sides, it is agreed that the complainants may withdraw their replication to answer of Mrs. Nancy A. Bradley, wife, &c., filed April 26th, 1884, and their answer to said Mrs. Bradley'- cross-bill filed, and the said Mrs. Bradley may withdraw her replication to said answer (with rights, however, reserved to both parties to renew said pleadings and reinstate the issues as hereinafter reserved), and that complainant- may file their annexed demurrers and the cause may be set down on the bills, answers, and demurrers.

In case said demurrers are overruled the answers and replications above mentioned may be renewed and stand restored to the record and cause proceed on traverse and issues thereby made as if they had not been withdrawn, the object of this agreement being to present in the simplest and least expensive manner the questions raised by said demurrers.

Dec. 19th, '85.

KENNARD, HOWE & PRENTISS,
For Complainant-.

W. H. ROGER, *For Def't-.*

124 U. S. Circuit Court.

H. B. CLAFLIN *et al.* vs. JULIUS LISSO *et al.* } Nos. 8896, 8897, 8898, 8899. Four Consolidated Cases.

(The joint and several demurrers of the complainant- herein, defendants in cross-bill of Mrs. Nancy A. Bradley, to said cross-bills.)

The complainants herein, made defendants in the cross-bill filed herein by Nancy A. Bradley, wife of John H. Scheen, by her next friend, June 10th, 1884, by protestation, not confessing all or any of the matters and things in the cross-complainants' said cross-bill contained to be true in such manner and form as the same *is* therein set forth and alleged, do jointly and severally demur to said cross-bill, and for cause of demurrer show—

First. That as appears on the face of the record and said cross bill the alleged recording of the claim or alleged mortgage right of said Mrs. Nancy A. Bradley at the dates mentioned in said cross-bill, to wit, April 30th, 1879, and June 1st, 1879 (cross-
125 bill filed 5), could give said Mrs. Bradley no mortgage or lien on the lands in controversy at the time of such recording.

Second. That the alleged recording could give said Mrs. Bradley no lien or mortgage on the lands in controversy during the pendency of the controversy between complainants herein and said John H. Scheen and said Nancy A. Bradley, his wife, *et als.*

Third. That, even if said Mrs. Bradley could acquire by such recording some claim of mortgage and lien as to others than complainant, she could acquire none as against or superior to the lien privilege and preference acquired by the complainants herein under proceedings, orders, and decrees herein and under the laws of Louisiana and the rules and jurisprudence of equity.

Fourth. That the proceedings in the State district court and supreme court in suit or suits set forth in said cross-bill cannot impair or in anywise take away the prior lien privilege and preference of these complainants herein, who are not alleged to be and were not parties to said suit or suits.

126 Fifth. That none of the proceedings in State insolvency set forth in said cross-bill can in anywise prejudice or impair the prior lien privilege and preference of these complainants acquired in this cause.

Sixth. That the said cross-bill doth not contain any matter of equity wherein this court can ground any decree or give to the plaintiff any relief against these defendants in said cross-bill—complainants in cause.

Wherefore, and for other good causes of demurrer appearing in the said cross-bill, these complainants, defendants therein, demur thereto, and humbly demand the judgment of the court whether they shall be compelled to make any further or other answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

KENNARD, HOWE & PRENTISS,
Solicitors for said Complainants, Defendants in Cross-Bill.

I certify that in my opinion the foregoing demurrer is well founded in point of law.

W. W. HOWE, *Of Counsel.*

127 U. S. OF AMERICA, *ss:*

William W. Howe, being duly sworn, says that he — the attorney and agent in Louisiana of the complainant herein, defendants in cross-bill, who are all absent from the State of Louisiana and from the fifth circuit, and that the above demurrer is not interposed for delay.

W. W. HOWE.

Affidavit waived.

Order, Bills, Answers, &c., Fixed for 16*th Jan'y*, 1886. *Ent'd & Filed Dec.* 19*th*, 1885.

United States Circuit Court.

H. B. CLAFLIN *et al.*
vs.
JULIUS LISSO *et al.* } No. 8896–'9.

On motion of W. W. Howe, of counsel for complainant—

Ordered, That this cause be set down for 16th January, 1886, at 11 a. m., on bills, answers, and demur-ers, under and subject to stipulation of Dec. 19th, 1885, this day filed with demurrers.

128 *Order. Surviving Partners of H. B. Claflin & Co. to Prosecute Cause. Ent'd & Filed Feb'y 6th*, 1886.

United States Circuit Court.

HORACE B. CLAFLIN *et al.*
vs.
JULIUS LISSO *et als.* } Nos. 8896–'9. Consolidated Causes.

On motion of W. W. Howe, of counsel for complainants, and on suggesting the recent death of Horace B. Claflin, a member of the complaining firm of H. B. Claflin & Co., and that all the rights of said complaining firm have survived to the other partners of said H. B. Claflin & Co., as set forth in the bills of complaint and other pleadings herein—

It is ordered that this cause do proceed in favor of said surviving partners of the firm of H. B. Claflin & Co. as well as of the other complainants.

DON A. PARDEE, *Judge.*

[On margin :] R. S. U. S., 3956.

Order. Correcting Decree of January 22d, 1883. Ent'd & Filed Feb'y 6th, 1886.

129 U. S. Circuit Court.

HORACE B. CLAFLIN *et al.*
vs.
JULIUS LISSO *et als.* } No-. 8896, 8897, 8898, 8899.

On motion of W. W. Howe, of counsel for complainant-, and suggesting that the decree of January 22d, 1883, was made and entered herein on consent in open court of the solicitors and counsel of all parties to the record—

It is ordered, all parties hereto consenting, that the minutes of said 22nd January, 1883, and the said decree be corrected so as to recite the said fact.

Feb'y 6th, 1886.

DON A. PARDEE, *Judge.*

Decree. Entered and Filed Feb'y 6th, 1886.

U. S. Circuit Court, E. D. of Louisiana.

HORACE B. CLAFLIN *et al.*
vs.
JULIUS LISSO *et al.* } No. 8896.

130 HENRY BERNHEIM *et al.*
vs.
JULIUS LISSO *et als.* } No. 8897.

SIMON AUGUST *et al.*
vs.
JULIUS LISSO *et als.* } No. 8898.

CHARLES F. CLAFLIN *et al.*
vs.
JULIUS LISSO *et al.* } No. 8899.

} Consolidated.

This cause, consolidated as above, came on to be heard on the bills of complaint and supplemental bills and answers of Mrs. Nancy A. Bradley, wife of John H. Scheen, filed Aug. 7th, 1884; upon the cross-bill of said Mrs. Scheen, filed June 10th, 1884, and the demurrers thereto, and under the stipulation of Dec. 19, 1885, 1886, filed herein and not argued by counsel.

W. W. Howe, for complainants, and W. H. Rogers, for defendant and cross-complainant, Mrs. Scheen.

Upon consideration whereof it is now ordered and decreed that the said answer of said Mrs. Nancy A. Bradley, wife of John H. Scheen, and her said cross-bill show no fact to oust the juris-
131 diction of this court by reason of the insolvency of Lisso and Scheen nor any right of priority of mortgage in her

favor as against complainants; that the demurrers of the complainant herein to the said cross-bill of the said Mrs. Nancy A. Bradley, wife of John H. Scheen, be, and the same hereby are, sustained and the said cross-bill dismissed.

It is further ordered and decreed that the lien privilege and preference of the complainants herein on the property or its proceeds described in the conveyance thereof, made November 3rd, 1878, from said John H. Scheen to said Nancy A. Bradley, his wife, by act before D. H. Hayes, notary public for the parish of Red River (which conveyance has been revoked as to the complainants by the decree herein of Jan. 22nd, 1883, and which property has been subjected to the judgments of the complainants in said decree specially detailed), be, and are hereby, recognized, declared, and made executory, and are adjudged to be in all respects superior and paramount to all and any mortgage claim or other debt or demand of the said Mrs. Nancy A. Bradley, wife of said John H. Scheen,
132 set up in this cause, and are declared to be a first lien, privilege, and preference on the said property, its proceeds, fruits, revenues, rents, and profits.

And it is further ordered and decreed that the said property described in said act of conveyance or *dation en paiement* of John H. Scheen to Nancy A. Bradley, his said wife, of November 3rd, 1878, and which act is made part of said decree of January 22nd, 1883, be advertized and sold at public auction for cash after thirty days' advertisement in the New Orleans Picayune, a daily newspaper of New Orleans, and by E. D. Craig, who is hereby appointed special master herein for this purpose, the said sale to be for cash, and the place thereof on the premises or at the door of the custom-house in New Orleans, as the master shall determine, and that the proceeds of such sale be applied *pro rata* to the payment of the said judgments of the complainants' firms, as detailed in said decree of Jan'y 22, 1883, and by preference to any claim of said Mrs. Nancy A. Bradley, wife of John H. Scheen.

It is further ordered that the claim of the complainant for any property described in said conveyance which is not found, and
133 for the value of which complainants claim a decree against the said Mrs. Nancy A. Bradley, and all the claims of the complainants against said Mrs. Scheen for rents, revenues, and profits of said property since November 3rd, 1878, be and are hereby referred to the same master for examination and taking testimony and report, and for further decree.

And — is further ordered that the said Mrs. Nancy A. Bradley, wife of John H. Scheen, pay all costs of this cause in the proceedings against her, being the sum of one hundred and forty-four & $\frac{70}{100}$ dollars, and this cause is retained in court for such further orders and decrees as may be necessary to settle and adjust the rights of parties.

Feb'y 6th, 1886.

DON A. PARDEE, *Judge.*

Petition for Appeal of Mrs. Nancy A. Sheen and Order. Ent'd & Filed April 1st, 1886.

HORACE B. CLAFLIN *et als.* vs. JULIUS LISSO *et als.* } No. 8896.

HENRY BERNHEIM *et al.* vs. JULIUS LISSO *et als.* } No. 8897.

134

SIMON AUGUST *et al.* vs. SAME. } No. 8898.

CHARLES F. CLAFLIN *et al.* vs. SAME. } No. 8899.

} Consolidated.

In the United States Circuit Court for the Eastern District of the State of Louisiana. In Equity.

To the honorable the judges thereof:

The petition of Mrs. Nancy A. Scheen, wife of J. H. Scheen, through her undersigned counsel, respectfully shows—

That she is aggrieved by the final judgment herein rendered on hearing upon supplemental bill and answer thereto of this petition and on demurrer to cross-bill of your petitioner, Mrs. Scheen, on the 6th day of February, 1886, and signed on the 6th day of February, 1886, and that she is informed and believes that there is error in said judgment to her prejudice, and that she is desirous of appealing therefrom to the Supreme Court of the United States; that the said complainants, Horace B. Claflin, Edward E. Eames, Horace J. Fairchild, Wm. S. Dunn, Dexter W. Force, Daniel Robinson, and

135 John Claflin, in cause No. 8896, claim the sum of nine thousand five hundred and eighty $\frac{40}{100}$ dollars, $9,580.40.

That Henry Bernheim and Elias August, complainants in cause No. 8897, claim the sum of six hundred and fifty-eight $\frac{38}{100}$ dollars $658.38.

That Simon August, Charles L. Bernheim, and Felix L. Bauer, complainants in cause No. 8898, claim the sum of two thousand three hundred and twenty-six $\frac{30}{100}$ dollars, $2,326.30.

That Charles F. Claflin and Thomas B. Thayer, complainants in cause No. 8899, claims the sum of two thousand two hundred and ninety-eight $\frac{57}{100}$ dollars, $2,298.57.

That all of said causes have been consolidated and proceeded with as one case.

That the said complainants seek to be paid out of the proceeds of sale of certain real estate situated in the parish of Red River, in the State of Louisiana, and that your petitioner, Mrs. Scheen, claims payment out of the proceeds of said real estate situated in said

parish of Red River, in the State of Louisiana, as first-mortgage creditor, to the amount of twenty-nine thousand two hundred
136 and eleven $\frac{23}{100}$ dollars; that the said real estate at the date of the rendition of the decree of this honorable court was worth more than five thousand dollars ($5,000), to wit, the sum of ten thousand dollars ($10,000), as will appear by annexed affidavits made part of this petition.

Wherefore your petitioner prays that she be allowed an appeal to the Supreme Court of the United States, and that a transcript of the record, proceedings, and evidence in the cause be certified and sent to the said Supreme Court; that the amount of bond be fixed, and that your petitioner be authorized to prosecute this appeal; that her husband is a party defendant and *an* interests *an* opposed to him in this cause, and she prays for general relief.

W. H. ROGERS,
For Petitioner.

It is ordered that Mrs. Nancy A. Scheen, wife of J. H. Scheen, be authorized to prosecute her said appeal; and it is further ordered that the said Mrs. Nancy A. Scheen be allowed an appeal from said decree of February 6th, 1886, as within prayed for, on her furnishing bond in the sum of three thousand dollars, conditioned
137 as the law directs, said appeal to operate as a supersedias, returnable to the Supreme Court of the United States on the second Monday of October next, 1886; and that the complainants be cited to answer this appeal.

New Orleans, April 1st, 1886.

DON A. PARDEE, *Judge.*

Affidavit of Mrs. Nancy A. Bradley Annexed to Petition of Appeal.

HORACE B. CLAFLIN *et al.* *vs.* JULIUS LISSO *et al.*	No. 8896.	Consolidated.
HENRY BERNHEIM *et al.* *vs.* JULIUS LISSO *et al.*	No. 8897.	
SIMON AUGUST *et al.* *vs.* SAME.	No. 8898.	
CHARLES F. CLAFLIN *et al.* *vs.* SAME.	No. 8899.	

138 In the United States Circuit Court for the Eastern District of the State of Louisiana, Holding Sessions at the City of New Orleans.

Madame Nancy A. Bradley, *neé* Scheen, the wife of J. H. Scheen, personally appeared before me, the undersigned authority, in person,

with her said husband, the said J. H. Scheen, in person, present before me at the time, and she, the said Madam Nancy A. Bradley, *neé* Scheen, being by me first duly sworn *by me* in the presence of her said husband, who was himself present authorizing his said wife herein, did, on her oath, first legally taken by her before me, depose and say that she is one of the defendants in the above entitled and numbered cases consolidated, and against whom therein the judgment and decree of the said United States circuit court aforesaid was, on the 6th day of February, 1886, rendered in the above entitled consolidated causes.

That her interests and rights of mortgage upon the property of her said husband involved in said consolidated causes amounts to largely more than five thousand dollars, and that her said debt and mortgage therein claimed by her against the property of her
139 said husband exceeds in amount the sum of twenty-nine thousand dollars, and that the property mentioned and described in the said consolidated suits or causes aforesaid and in the judgment and decree of the said United States circuit court of the 6th day of February, 1886, therein rendered, largely exceeds in value the sum of five thousand dollars, and that said property, by reason of improvements made and placed on said property since November, 1878, was, on the 6th day of February, 1886, and is now worth the sum and is of the value of ten thousand dollars and more, and that said property is the same as that described in and referred to in the aforesaid consolidated suits and the decree of the said United States circuit court, of date the 6th day of February, 1886, and that the said affiant is one of the defendants in the said consolidated suits and against whom the said judgment and decree of the said United States circuit court of the 6th day of February, 1886, was rendered.

NANCY A. SCHEEN.
Authorized by me, J. H. SCHEEN.

Sworn and subscribed to before me, the *the* undersigned, at
140 my office, in the town of Coushatta, State of Louisiana, parish of Red River, on this the 14th day of March, 1886.

[SEAL.] DUKE H. HAYES,
Notary Public.

Affidavit Annexed to Petition.

HORACE B. CLAFLIN *et al.*
vs.
JULIUS LISSO *et als.* } 8896.

HENRY BERNHEIM *et al.*
vs.
SAME. } 8897.

SIMON AUGUST *et als.*
vs.
SAME. } No. 8898.

CHARLES F. CLAFLIN *et als.*
vs.
SAME. } 8899.

In the United States Circuit Court for the Eastern District of *Louisiana of* the State of Louisiana, Holding Sessions at the City of New Orleans.

Before me, Duke H. Hayes, a notary public, duly appointed, commissioned, qualified, and acting notary public in and for the parish of Red River, State of Louisiana, personally came and appeared James M. T. Elliott, sheriff of the said parish of Red
141 River, and W. H. Warmsley, his deputy; Frank B. Williams, clerk of the district court for the parish of Red River, and L. M. Howard, his deputy; Thomas L. Terry, president of the police jury for said parish of Red River; Ben. Wolfson, assessor for said parish, all of whom, being by me first duly and seperately sworn according to law, jointly and seperately depose and say that they and each of them are, respectively, the present incumbents in office in the said parish of Red River, as above herein set forth; that they and each of them are personally cognizant of and familiar with the property described in the act of *daitione en paiement*, from J. H. Scheen, husband, to Nancy A. Bradley, his wife, passed before D. H. Hayes, notary public, and dated on the 23d day of November, 1878, and being the property described and involved in the above and foregoing consolidated causes in the aforesaid circuit court of the United States and in the judgment and decree of the said circuit court of the United States for the eastern district of the State of Louisiana, of date the 6th day of February, 1886, and that the value of said property did, on the 6th day of February, 1886, and
142 does now exceed the sum and value of five thousand dollars, and was then and is now of the value of ten thousand dollars or more, and that the improvements placed on said property and the enhancements of said property since November, 1878, have largely increased and enhanced the value of said property since November, 1878.

J. M. ELLIOTT.
W. H. WARMSLEY.
F. B. WILLIAMS.
L. M. HOWARD.
THOS. L. TERRY.
BEN. WOLFSON.

Sworn to and subscribed before me, the undersigned, notary public, at my office, in the town of Coushatta, in the parish of Red River, State of Louisiana, on this the fourth day of March, 1886.

[SEAL.] DUKE H. HAYES,
Notary Public.

Petition of Chris. Chaffe, Jr., Syndic, for Appeal and Order on Same. Filed April 1st, 1886.

HORACE B. CLAFLIN *et al.* *vs.* JULIUS LISSO *et al.*	No. 8896.	Consolidated. In Equity.
HENRY BERNHEIM *et al.* *vs.* JULIUS LISSO *et al.*	No. 8897.	
SIMON AUGUST *et al.* *vs.* SAME.	No. 8898.	
CHAS. F. CLAFLIN *et al.* *vs.* SAME.	No. 8899.	

In the United States Circuit Court for the Eastern District of the State of Louisiana.

To the honorable judges thereof:

143 The petition of Christopher Chaffe, Jr., syndic for the insolvent estate of the commercial firm or partnership of Lisso and Scheen and for the insolvent estate of Julius Lisso and J. H. Scheen, individually, the members of said firm, respectfully represents that he was regularly and legally appointed and qualified as the syndic for the said insolvent estate in the hon. the tenth district court of Louisiana on or about the — day of September, 1880, under and pursuant to the *cessio bonorum* made by the said insolvents in the said tenth district court of the State of Louisiana on or about the 1st day of May, 1880, and since his said appointment and qualification as said syndic by effect of the law of the said State of Louisiana and the said *cessio bonorum* he, in his said capacity as syndic thereof, has had the sole and exclusive custody, possession, and administration of all the property, real and personal, rights, and credits so ceded by said insolvents or belonging to or vested in them in any manner at the date of their said *cessio*.

144 That as such syndic as aforesaid he is joined and is one of the parties defendants in the suits and causes first herein described, entitled, and numbered, and that he is aggrieved in his said — as syndic for the creditors of the said insolvent (Lisso and Scheen, as a firm, and Julius Lisso and J. H. Scheen individually), and the said creditors of the said insolvent, as a mass, so represented by him, are aggrieved by the final judgment herein rendered on hear-

ing upon the supplemental bill of the complainants and answer thereto of Mrs. Nancy A. Scheen, wife of J. H. Scheen, and on demurrer to the cross-bill of the said Mrs. Nancy A. Scheen, one of the codefendants with your petitioner herein, on the 6th day of February, 1886, and signed on the 6th of February, 1886, and that he is informed and believes that there is error in said judgment to his prejudice, as also to the prejudice of the mass of the creditors of said Lisso and Scheen and of Julius Lisso and J. H. Scheen, individually, so represented by him as syndic as aforesaid, and that he desires to appeal therefrom to the Supreme Court of the United States.

That the said complainants, Horace B. Claflin, Edward E.
145 Eames, Horace J. Fairchild, William S. Dunn, Dexter W. Force, Daniel Robinson, and John Claflin, in cause No. 8896, claim the sum of nine thousand five hundred and eighty $\frac{40}{100}$ dollars, $9,580.40.

That Henry Bernheim and Elias August, complainants in cause No. 8897, claim the sum of six hundred and fifty-eight $\frac{38}{100}$ —, $658.38.

That Simon August, Charles L. Bernheim, and Felix L. Bauer, complainants in cause No. 8898, claim the sum of two thousand three hundred and twenty-six $\frac{30}{100}$ —, $2,326.30.

That Charles F. Claflin and Thomas B. Thayer, complainants in cause No. 8899, claim the sum of two thousand two hundred and ninety-eight .57 —, $2,298.57.

That all of said causes have been consolidated and proceeded with as one case.

That the said complainants seek to have certain real estate situated in the parish of Red River, in the State of Louisiana, sold by the marshal of this court and to be paid their said claims out of the proceeds, while the said real estate form- part of the assets of
146 the aforesaid insolvent estates and is now and heretofore has under the administration, custody, and control of your petitioner, as the syndic of the said insolvents, for the benefit of the mass of the creditors of said insolvents, which your petitioner is entitled to retain and cause to be sold under the law of the said State of Louisiana, and to disburse according to law the proceeds thereof among all the creditors of the said insolvents according to their rank and privilege, respectively.

That the said real — so involved in dispute herein at the date of the rendition of the decree of this honorable court was and is now worth more than five thousand dollars, $5,000, but was then and is now worth the sum of ten thousand dollars, as will appear by references to the annexed copies of affidavits hereto annexed and made part hereof, the original of which are now on file in this cause and annexed to a petition of Mrs. Nancy A. Scheen for appeal from said judgment, and to which special reference is hereby made.

Wherefore your petitioner prays that he be allowed an appeal to the honorable the Supreme Court of the United States, and
147 that a transcript of the record, proceedings, and evidence in the said causes be certified and sent to the said Supreme Court, that the amount of bond be fixed, and that your petitioner

be recognized in sufficient security therefor, and he prays further for all orders and decree necessary or needful in the premises and for general relief.

L. B. WATKINS,
EGAN & PIERSON,
For Petitioners.

Order.

It is ordered that the said Christopher Chaffe, Jr., syndic, be allowed an appeal from said decree of February 6th, 1886, as within prayed for, on his furnishing bond in the sum of two hundred dollars, conditioned as the law directs, returnable to the Supreme Court of the United States.

April 1st, 1886.

DON A. PARDEE, *Judge.*

Affidavit of Mrs. Nancy A. Bradley, *nee* Scheen, annexed to petition, copied on page No. 137 of this transcript.

148 Affidavit as to value of real estate, annexed to petition, copied on page No. 140 of this transcript.

149 *Bond for Appeal of Mrs. Nancy A. Scheen. Filed April 1st, 1886.*

UNITED STATES OF AMERICA:

Know all men by these presents that we, Mrs. Nancy A. Bradley, wife of J. H. Scheen, herein duly authorized by the court, and Louis E. Scheen and H. F. Scheen, are held and firmly bound, jointly and severally, unto Horace B. Claflin, Edward E. Eames, Horace J. Fairchild, William S. Dunn, Dexter W. Force, Daniel Robinson, Jno. Claflin, Henry Bernheim, Elias August, Simon August, Charles L. Bernheim, Felix L. Bauer, Charles F. Claflin, Thomas B. Thayer in the sum of three thousand dollars, lawful money of the United States of America, to be paid to the said Horace B. Claflin, Edward E. Eames, Horace J. Fairchild, William S. Dunn, Dexter W. Force, Daniel Robinson, Jno. Claflin, Henry Bernheim, Elias August, Simon August, Charles L. Bernheim, Felix L. Bauer, Charles T. Claflin, and Thomas B. Thayer, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs,
150 executors, and administrators, firmly by *by* these presents.

Sealed with our seals and dated the 1st day of April, in the year of our Lord eighteen hundred and eighty-six.

Whereas the said Mrs. N. A. Bradley, wife of J. H. Scheen, having heretofore, to wit, on the — day of March, 1886, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 6th day of February, 1886, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of—

Horace B. Claflin *et als. vs.* Julius Lisso *et als.*, No. 8896;
Henry Bernheim *et als. vs.* Julius Lisso *et als.*, — 8897;
Simon August *et al. vs.* Julius Lisso *et als.*, — 8898;
Chas. T. Claflin *et al. vs.* Julius Lisso *et als.*, — 8899;
} Consolidated.

Nos. 8896, '7, '8. & 8899 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden Mrs. N. A. Bradley, wife of J. H. Scheen, shall prosecute her said appeal to effect and shall answer all damages and costs if she shall fail to make good her plea, then this obligation shall be void; otherwise to remain in full force and virtue.

151 MRS. N. A. SCHEEN, [L. S.]
By her att'y, W. H. ROGERS.
LOUIS E. SCHEEN. [L. S.]
H. F. SCHEEN. [L. S.]

Signed, sealed, and delivered in the presence of—
W. H. ROGERS.

Bond accepted.
DON A. PARDEE, *Judge.*
April 1st, 1886.

UNITED STATES OF AMERICA, *Eastern District of Louisiana,* } *ss:*

Personally appeared Louis F. Scheen and H. F. Scheen, who, each being duly sworn, for himself deposes and says that he is the surety on the within bond; that he resides in the State of Louisiana, and is worth the full sum of three thousand dollars over and above all of his debts and liabilities and property — from execution.

LOUIS E. SCHEEN.
H. F. SCHEEN.

Subscribed and sworn before me this 1 day of April, 1886.
DON A. PARDEE, *Judge.*

152 *Bond for Appeal of Chris. Chaffe, Jr., Syndic. Filed April 1st,* 1886.

UNITED STATES OF AMERICA:

Know all men by these presents that we, Chris. Chaffe, Jr., syndic of the insolvents, Lisso and Scheen, and of Julius Lisso and J. H. Scheen individually, and H. F. Scheen and Louis E. Scheen, are held and firmly bound, jointly and severally, unto Horace B. Claflin, Edward E. Eames, Horace J. Fairchild, William S. Dunn, Dexter W. Force, Daniel Robinson, John Claflin, Henry Bernheim, Elias August, Simon August, Charles L. Bernheim, Felix L. Bauer, Charles T. Claflin, and Thomas B. Thayer in the sum of two hundred dollars, lawful money of the United States of America, to be paid to

the said Horace B. Claflin, Edward E. Eames, Horace J. Fairchild, William S. Dunn, Dexter W. Force, Daniel Robinson, John Claflin, Henry Bernheim, Elias August, Simon August, Charles L. Bernheim, Felix L. Bauer, Charles T. Claflin, and Thomas B. Thayer, their heirs, executors, administrators, and assigns; for which
153 payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 1st day of April, 1886, in the year of our Lord eighteen hundred and eighty six.

Whereas the said Chris. Chaffe, Jr., syndic, having heretofore, to wit, on the — day of March, 1886, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 6th day of February, 1886, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of—

H. B. Claflin *et als. vs.* Julius Lisso *et als.*, No. 8896;
H. Bernheim *et al. vs.* Julius Lisso *et als.*, No. 8897;
Simon August *et al. vs.* Same, No. 8898;
Charles T. Claflin *et al. vs.* Same, No. 8899,
} Consolidated.

Nos. 8896, '7, '8, and 8899 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden Chris. Chaffe, Jr., syndic, shall prosecute said appeal to effect and shall answer all damage and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

154 L. B. WATKINS, [L. S.]
Per F. F. HANSELL,
Att'y for Chris. Chaffe, Jr., Syndic.
H. F. SCHEEN. [L. S.]
LOUIS E. SCHEEN. [L. S.]

Signed, sealed, and delivered in the presence of—
W. H. ROGERS.

Bond accepted.
DON A. PARDEE, *Judge.*

UNITED STATES OF AMERICA,
Eastern District of Lousiana, } *ss:*

Personally appeared H. F. Scheen and Louis E. Scheen, who, being each duly sworn, for himself deposes and says that he is the security on the within bond; that he resides — State of Louisiana and is worth the full sum of two hundred dollars over and above all of his debts and liabilities and property exempt from execution.

H. F. SCHEEN.
LOUIS E. SCHEEN.

Subscribed and sworn before me this 1st day of April, 1886.
DON A. PARDEE, *Judge.*

The following authority attached to above bond:

155 F. F. Hansell, law bookseller and dealer in stationery, school books & notions, near City Hotel, 30 Camp St.

NEW ORLEANS, *April 26th*, 1886.

H. B. CLAFLIN *et al.* *vs.* LISSO & SCHEEN *et al.* } Consolidated Cases in U. S. Circuit Court, N. O.

This is to authorize Mr. F. F. Hansell, for me and in my name, as attorney of mine, to sign the name of Chaffe, Jr., def. syndic, to the appeal bond in said cause and annex this to same.

L. B. WATKINS, *Att'y.*

156 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 155 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the cases of Horace B. Claflin *et al. vs.* Julius Lisso *et als.*, No. 8896; Henry Bernheim *et al. vs.* Julius Lisso *et als.*, 8897; Simon August *et al. vs.* Julius Lisso *et als.*, 8898; Chas. F. Claflin *et al. vs.* Julius Lisso *et als.*, 8899, of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 18 day of September, A. D. 1886.

{ Seal U. S. Circuit Ooort for the 5th Circuit & Eastern District of La. }

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 18 day of September A. D. 1886.

EDWARD C. BILLINGS, *Judge.*

157 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Horace B. Claflin, Edward E. Eames, Horace J. Fairchild, William S. Dunn, Dexter W. Force, Daniel Robinson, Jno. Claflin, Henry Bernheim, Elias August, Simon August, Charles L. Bernheim, Felix L. Bauer, Charles T. Claflin, Thomas B. Thayer, consolidated cases, No. 8896, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a petition & order for an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Horace B. Claflin, Edward E. Eames, Horace J. Fairchild, William S. Dunn, Dexter W. Force, Daniel Robinson, Jno. Claflin, Henry Bernheim, Elias August, Simon August, Charles L. Bernheim, Felix L. Bauer, Charles T. Claflin, Thomas B. Thayer—cases Nos. 8896, 8897, 8898, 8899, consolidated under 8896—are appellees and Mrs. Nancy A. Bradly, wife of J. H. Scheen, is appellant, to show cause, if any there be, why the decree rendered against the said Mrs. Nancy A. Bradley, wife of J. H. Scheen, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 1 day of April, in the year of our Lord one thousand eight hundred and eighty-six.

DON A. PARDEE, *Judge.*

158 [Endorsed:] United States circuit court, eastern district of Louisiana. R. Nos. 8896 to 8899, consolidated under No. 8896. Horace B. Claflin & Co. *et als. vs.* Julius Lisso *et als.* Citation of appeal. No. —. U. S. circuit court, eastern district of Louisiana. Filed April 6, 1886. H. J. Carter, d'y clerk.

Marshal's Return.

Received Apr. 1, 1886, by the U. S. marshal, and on the 1st April, 1886, I served a true duplicate of the within citation of appeal on Horace B. Claflin, Edward E. Eames, Horace J. Fairchild, William S. Dunn, Dexter W. Force, Daniel Robinson, John Claflin, Henry Bernheim, Elias August, Simon August, Charles L. Bernheim, Felix L. Bauer, Charles T. Claflin, Thomas B. Thayer in consolidated cases Nos. 8896, 8897, 8898, 8899, appellees therein, by handing same to the Hon. W. W. Howe in person in the city of New Orleans and leaving same in his hands, he being one of the attorneys of record of said appellees in said cases, and all said appellees residing out of this district.

R. B. PLEASANTS,
U. S. M'l., E. D. of Louisiana,
By DAN. A. ROSE,
D'y U. S. Ma-hal.

I, Dan'l A. Rose, being duly sworn, do depose and say that I am a lawful deputy of R. B. Pleasants, United States marshal for the eastern district of Louisiana, & that the return of service as above stated is true & correct.

DAN. A. ROSE.

Subscribed and sworn before me April 6, 1886.

H. J. CARTER,
Deputy Clerk United States Circuit Court,
Eastern District of Louisiana.

159 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Horace B. Claflin, Edward E. Eames, Horace J. Fairchild, William S. Dunn, Dexter W. Force, Daniel Robinson, Jno. Claflin, Henry Bernheim, Elias August, Simon August, Charles L. Bernheim, Felix L. Bauer, Charles T. Claflin, Thomas B. Thayer, consolidated cases, No. 8896, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition & order for an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Horace B. Claflin, Edward E. Eames, Horace J. Fairchild, William S. Dunn, Dexter W. Force, Daniel Robinson, Jno. Claflin, Henry Bernheim, Elias August, Simon August, Charles L. Bernheim, Felix L. Bauer, Charles T. Claflin, Thomas B. Thayer—cases Nos. 8896, 8897, 8898, 8899, consolidated under No. 8896—complainants, are appellees and Christopher Chaffe, Jr., syndic, is appellant, to show cause, if any there be, why the decree rendered against the said Mrs. Nancy A. Bradley, wife of J. H. Scheen, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 1st day of April, in the year of our Lord one thousand eight hundred and eighty-six.

DON A. PARDEE, *Judge.*

160 [Endorsed:] United States circuit court, eastern district of Louisiana. R. No. 8896 to 8899, consolidated under No, 8896. Horace B. Claflin & Co. *et als. vs.* Julius Lisso *et als.* Citation of appeal. No. —. U. S. circuit court, eastern district of Louisiana. Filed April 6, 1886. H. J. Carter, clerk.

Marshal's Return.

Received Apr. 1, 1886, by the U. S. marshal, and on the 1st April. 1886, I served a true duplicate of the within citation of appeal on Horace B. Claflin, Edward E. Eames, Horace J. Fairchild, William S. Dunn, Dexter W. Force, Daniel Robinson, John Claflin, Henry Bernheim, Elias August, Simon August, Charles L. Bernheim, Felix

L. Bauer, Charles T. Laflin, Thomas B. Thayer, in consolidated cases Nos. 8896, 8897, 8898, 8899, appellees herein, by handing same to the Hon. W. W. Howe, he being one of the attorney- of record of all said appellees, said service being made in person in the city of New Orleans, & said citation of appeal left in his hands on said date, April 1st, 1886, all said appellees residing out of the eastern district of Louisiana.

R. B. PLEASANTS,
U. S. Marsh-l, Eastern District of La.
By DAN. A. ROSE,
D'y U. S. Mar-hal.

I, Dan'l A. Rose, being duly sworn, do depose and say that I am a lawful deputy of R. B. Pleasants, U. S. marshal for the eastern district of Louisiana, & that the return of service as above stated is true & correct.

DAN. A. ROSE.

Subscribed and sworn before me April 6, 1886.
H. J. CARTER,
Deputy Clerk United States Circuit Court,
Eastern District of Louisiana.

Endorsed on cover: E. Louisiana C. C. U. S. No. 384. Mrs. Nancy A. Bradley, wife of J. H. Scheen, & Christopher Chaffe, Jr., syndic, appellants, *vs.* Horace B. Claflin, Edward E. Eames, Horace J. Fairchild, *et al.*, composing the firm of H. B. Claflin & Company *& Co. et al.* Filed October 2, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 110.

NANCY A. BRADLEY, WIFE OF J. H. SCHEEN ET AL.,

vs.

HORACE B. CLAFLIN ET ALS.

To explain and complete the transcript of record, which has been filed in greatly abbreviated form, it is agreed that the omitted answers to original bills of complaint were filed in the respective causes March 3d, 1880, and replication filed by complainants thereto March 3d, 1880; and that the judgments set forth in the decrees of January 22d, 1883, and of February 6th, 1886, on law side of Court, were rendered June 1st, 1880, and signed June 5th, 1880, being for the amounts set forth in said decrees.

W. W. HOWE,

For Appellees.

W. H. ROGERS,

For Appellants.

New Orleans, November 8th, 1889.

United States Circuit Court.

HORACE B. CLAFLIN *et al.*
vs.
JULIUS LISSO *et al.*
HENRY BERNHEIM *et al.*
vs.
JULIUS LISSO *et al.*
SIMON AUGUST *et al.*
vs.
JULIUS LISSO *et al.*
CHARLES F. CLAFLIN *et al.*
vs.
JULIUS LISSO *et al.*

Nos. 8896, 8897, 8898, 8899.
Consolidated.

This cause, consolidated as above, came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

First. That as to the Act of Conveyance from the defendant, Julius Lisso, to the defendant Clara Forcheimer, his wife, recited in the bills of complaint herein, passed before D. H. Hayes, Notary, November 23d, 1878, and of which a copy was filed herein as an exhibit November 26th, 1879, the demands of the complainants herein be in all things rejected and dismissed.

Second. That as to the Act of Conveyance or *dation en payment* recited in the bills of complaint herein, made by the defendant, John H. Scheen, unto the defendant, Nancy A. Bradley, his wife, by act passed before D. H. Hayes, Notary, parish of Red River, November 23d, 1878, and filed for record and recorded in said parish in Conveyance and Mortgage books the same day, and whereof a certified copy has been filed as an exhibit herein November 26th, 1879, and is now annexed hereto as part hereof, be and the same hereby is in all things revoked, annulled and set aside, and the property therein described and purporting thereby to be conveyed to said Mrs. Nancy A. Bradley, wife of John H. Scheen, declared to have been the property of said John H. Scheen at the time the bills of complaint herein were filed to-wit, November 13th, 1879, and is hereby subjected to the just claims, demands and payments of the complainants herein; subject to provisions hereinafter made, which judgments of complaint herein against said Julius Lisso and John H. Scheen in *solido* are as follows:

H. B. Claflin & Co. vs. Lisso & Scheen, No. 8883, of the docket of this court, $9,580.14, with interest as thereon set forth.

H. Bernheim & August vs. Lisso & Scheen, No. 8880, $655.38, with interest as thereon set forth.

August, Bernheim & Bauer vs. Lisso & Scheen, No. 8881, $2,326.36, with interest as thereon set forth.

Claflin & Thayer vs. Lisso & Scheen, No. 8882, $2,298.57, with interest as thereon set forth.

And it is further ordered that any mortgage claims

which said Mrs. Scheen may have against said property described in said deed of November 23d, 1878, be and the same are hereby reserved for further decision

Third. And inasmuch as Christopher Chaffe, Jr., Syndic of Lisso & Scheen, appointed in certain proceeding in the State District Court of Red River parish, which proceedings were begun May 8th, 1880. has been made party hereto and makes claim as such Syndic to all the property described in said Act of Conveyance and *dation* to said Mrs. Nancy A. Bradley, for distribution *pro rata* among the creditors of said Scheen, while the complainants claim that in equity as well as under the law of Louisiana they are entitled to have the same, or its proceeds applied by preference, in satisfaction, so far as it will go, of their such judgments, it is further ordered that the decision of this question as between the complainants and said Syndic be reserved for further consideration and decree.

And it is further ordered that the question of costs be reserved for further settlement and taxation.

Made and entered on consent in open court of the Solicitors and Counsel of all parties to the record.

[Signed]

EDWARD C. BILLINGS,

January 22d, 1883. Judge.

It is consented that the transcript of record in case of Mrs. N. A. Bradley et al., vs. Horace B. Claflin et als., No. 110, United States Supreme Court, October term 1889, be corrected by inserting therein or printing, by way of addendum thereto, the above de-

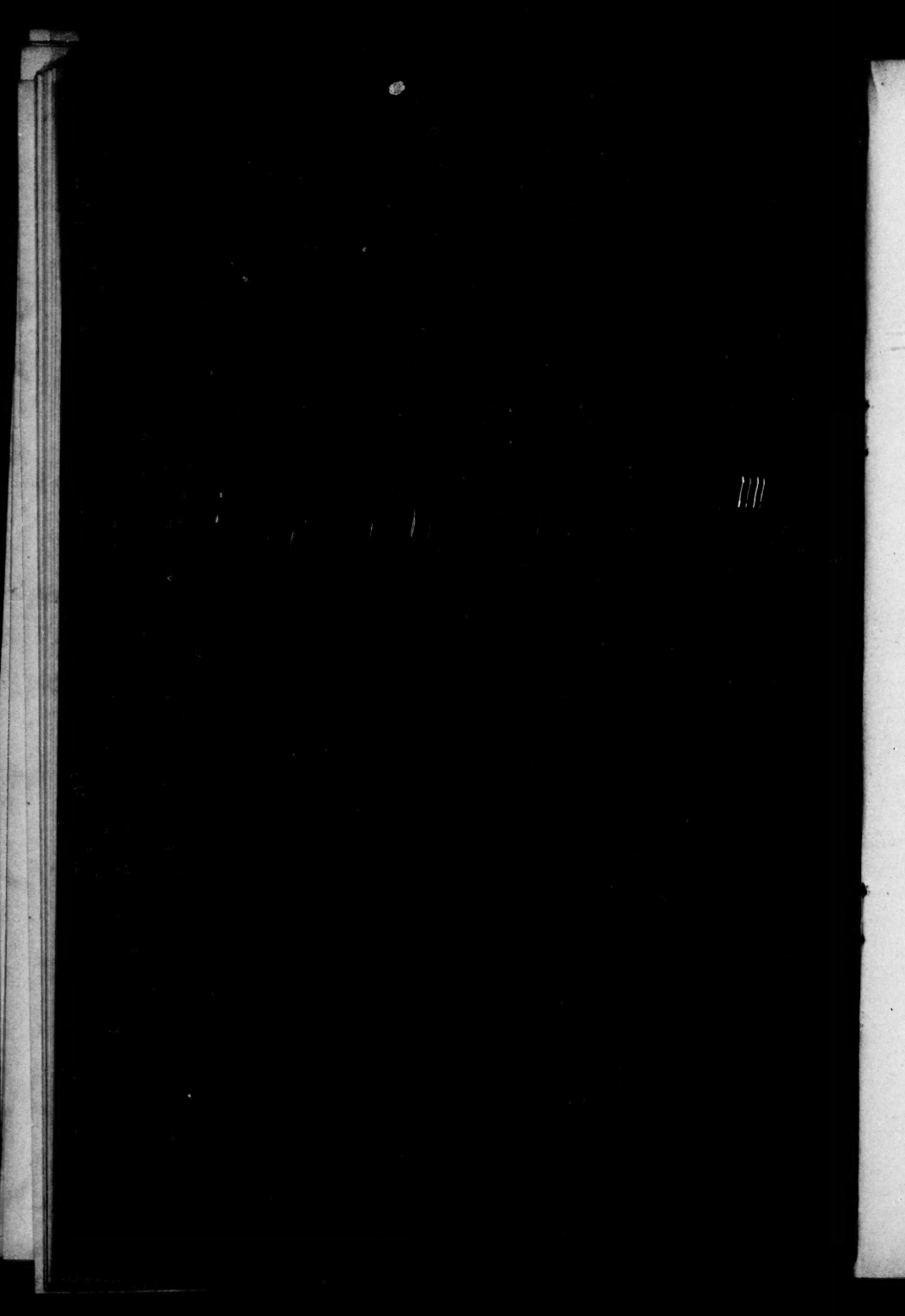
cree of January 22d, 1883, referred to in the decree appealed from. The Act of Conveyance, or *dation en payment* referred to in said decree of January 22d, 1883, and made part thereof, need not again be copied as it is set forth as an exhibit of the bills and is presented at pp. 15--18 inclusive of the Transcript of Record.

W. H. Rogers, for Appellants.

W. W. HOWE, Of Counsel

For Appellees.

New Orleans, Oct. 16, 1889.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1889.

No. ———

MRS. NANCY A. BRADLEY, WIFE OF J. H. SCHEEN, AND CHRISTOPHER CHAFFE, JR,, SYNDIC, APPELLANTS,

versus

HORACE B. CLAFLIN, ET ALS., APPELLEES.

EQUITY CASE.

Appeal from United States Circuit Court, Fifth Circuit Eastern District of Louisiana.

BRIEF FOR APPELLANTS.

STATEMENT OF CASE.

This is an appeal from a decree sustaining exception to answer and demurrer to cross bill of defendants and appellants, the decree at the same time finally disposing of the case, rendered 6th February, 1886. (Transcript, page 52.) The case therefore stands upon the sufficiency of the answer and the sufficiency of the cross bill. This makes a statement of the pleadings necessary to understand the case.

The four original cases were consolidated by consent. (Transcript, page 19.)

All of the complainants were ordinary creditors of the commercial firm of Lisso & Scheen, merchants in Red River Parish, Louisiana. By *ordinary creditors*, we mean without any security, mortgage privilege or lien. Privilege, under the law of Louisiana, is a legal right which the nature of a debt gives to a creditor, to be preferred before other creditors (Louisiana Civil Code, Article 3186), and is equivalent to a statutory lien. Complainants had no *privilege* by reason of the nature of their claims.

In 1879 they filed in the State District Court their several suits at law against Lisso & Scheen for the amounts of their respective claims, accompanied by writs of attachment against the debtors, which attachments, if they had been maintained, would have given them a privilege on the property attached, superior to subsequent seizing creditors, but not superior to anterior mortgages.

The complainants removed their cases into the United States Circuit Court, Eastern District of Louisiana, where the writs of attachment were dissolved by judgment of the Court on 1st June, 1880.

In the meantime and without waiting for a judgment on their several demands as creditors of Lisso & Scheen, the complainants on 13th Novem-

ber, 1879, filed their several bills in Equity now before this Court in this transcript, in which they averred the fact that they were creditors of Lisso & Scheen; that they had, on 4th December, 1878, sued out writs of attachment in the State District Court; the seizure of property thereunder; that Julius Lisso and John H. Scheen, on 28th November, 1878, did conspire and collude with their said wives to cheat, hinder and delay and defraud the complainants by making a pretended simulated and fraudulent transfer of all the real estate of the said Lisso and Scheen unto their said wives. The said acts purported to be *dations en paiement*, but complainants charge that each of them was illegal, fraudulent, simulated and void, the price inadequate and they gave an unjust preference, and the said Lisso & Scheen owed their wives nothing at the time. The object being to subject the real estate described in the deeds to the payment of the complainants, in preference to the claims of Mrs. Lisso and Mrs. Scheen.

By a decree interlocutory as to Mrs Scheen and final as to Mrs. Lisso, rendered 23rd January, 1883, the bills were dismissed as to Mrs. Julius Lisso, and she passed out of the case.

A supplemental bill filed 8th June, 1882, (Transcript, page 25) in which complainants averred that Mrs. Bradley had sued her husband and Chaffe,

Syndic, on her mortgage claims in the State Court, and that her claims had been rejected, the surrender in insolvency of Lisso & Scheen; the election of Chaffe as Syndic, and complainants pray that he be made a party, and that complainants be decreed to be paid by preference out of the property referred to.

A second supplemental bill, filed 23rd January, 1883, (Transcript, pages 26 and 27,) avers that Mrs. Nancy Bradley, wife of John H. Scheen, sets up some claim by way of mortgage on the property described in the conveyance, and prays that her mortgage claims may be declared void, as to the demands and preference of complainants.

Mrs. Nancy Bradley, wife of John H. Scheen, answered in substance as follows:

"It is true, as stated in the bill, that she sets up a claim by way of mortgage on the property mentioned in the bill, and it is not true that her claim is null, void or illegal, and it is not true that her claims are subordinate to the claims and preference asserted by complainants. On the contrary, she avers that her claims are lawful and valid claims, superior in rank and entitled to priority of payment, out of the property mentioned, over the claims of complainants. She was married to John H. Scheen, in the Parish of Bienville, La., in 1857, and at all times since the marital domicil has been in Louis-

iana; that she is the only child of Hampton Bradley and his wife Susan, the latter of whom is dead; after her marriage in 1857, her father and mother made to her, at different times, valuable donations, which were, under the laws of Louisiana, her separate paraphernal property, which came into the hands of her husband and expended by him for his own account and applied by him to his own uses, an itemized statement of which she annexes and makes a part of her answer, by which her husband became indebted to her prior to 1875 and prior to the time when complainants became creditors in the sum of $29,321.23, and he is still indebted to her in said sum, with interest; and to secure the repayment to her she has, under the laws of Louisiana, a legal mortgage on all real estate (immovable property) owned by him at any time since said paraphernal funds came into his hands. She recorded her claims as required by law to give said legal mortgage effect against third persons, on 30th April, 1879, in the Parish of Red River, and on 30th June, 1879, in the Parish of Bienville.

Her husband became financially embarrassed in 1879, and in May, 1880, he made a *cessio bonorum* under the insolvent laws of Louisiana, and ceded and surrendered to his creditors all of his property, rights and credits, including the real estate in the Parishes of Red River and Bienville, affected by

said legal first mortgage in favor of this defendant. Christopher Chaffe, Jr., was elected and commissioned Syndic, (equivalent to assignee in bankruptcy,) and now has under his control and administration the said real estate (immovable property) surrendered, and on which she has her legal mortgage.

On 16th February, 1883, she instituted a suit against her husband and against Chaffe, Syndic, who had possession of the immovable property (real estate) affected by her legal mortgage. Chaffe, Syndic, contested her claim, and after issue joined and contradictorily with him a final judgment was rendered and signed 7th December, 1883, in her favor for the sum of $29,321.23, with five per cent. interest from 11th February, 1883, with recognition of her legal mortgage on all the immovable property in the Parishes of Red River and Bienville, from 30th April, 1879.

Chaffe, Syndic, appealed to the Supreme Court of Louisiana, which Court affirmed said judgment, except so far as it recognized the legal mortgage on property in Bienville Parish, on the ground that it found no proof of the registry of her mortgage in the Parish of Bienville, and expressly reserved to her the right to make such proof, which proof she is now ready to make.

As to so much of the supplemental bill as says

the mortgage claims of defendant are subordinate to the claims of preference of complainants; she says the complainants were ordinary creditors at large of the firm of Lisso & Scheen, of which her husband was a partner, and none of the real estate described or referred to in the bills was partnership property, but the individual members were joint owners, and such real estate property was not assets of the firm, and she as an individual creditor having a legal mortgage on the individual property of her husband, had a legal right to be paid out of its proceeds in preference.

At the time of the filing of the bills of complaint, none of the complainants had reduced their claims to judgment, and the sole ground averred upon which the jurisdiction of the Circuit Court in equity to entertain said several bills, was the existence of an attachment lien on the property of defendants, which writs of attachment was dissolved on 1st June, 1880, by final judgment of the Circuit Court in the cases at law, and by said judgments the complainants are precluded from claiming any attachment lien. As soon as the said writs of attachment were dissolved, the defendants in said suit lawfully surrendered the property for the benefit of their creditors under the insolvent laws of the State, in the State District Court having jurisdiction, which cession and surrender were accepted by the

Court, and Chaffe was elected and commissioned Syndic and put into actual possession of the property described in the bills, and said Syndic has remained in lawful possession of said property as an officer of the State Court and under its orders, and by reason of the premises, it became imperatively necessary for her to assert, as she did, her paraphernal claims and mortgages upon said property in the actual custody and under the control and administration of the State Court and the judgment of the State Court in her favor is entitled to be regarded by this Court, as a judgment of a Court of competent jurisdiction, operative and effective, in her favor and binding upon the persons and property which it purports to bind and its conclusive effects can not be here questioned, except upon averment and proof of fraud and collusion in the procuring of said judgment, and she avers the proceedings were in all respects in good faith and regular, and her claims were honest and valid claims, sustained by evidence to the satisfaction of the State District Court and the Supreme Court of Louisiana; and so far as the judgment of the Supreme Court of Louisiana is one of non-suit, as to her legal mortgage on lands in Bienville Parish, she will make proof of the registry thereof and she is entitled to a decree recognizing and enforcing her mortgage on said lands. She then

denies all manner of unlawful combination and conspiracy. This answer was sworn to on 29th March, 1884, (Transcript, pages 30-38.)

There appears in the Transcript (certified to be complete) no exception to its sufficiency, and no replication. There is a stipulation (Transcript, page 49) "that complainants may withdraw their replication to answer of Mrs. Nancy A. Bradley, filed 26th April, 1884, and their answer to said Mrs. Bradley's cross-bill, and Mrs. Bradley may withdraw her replication to said answer, (with rights however reserved to both parties to renew said pleadings and reinstate the issues as hereinafter reserved,) and the complainant may file their annexed demurrers, and the cause may be set down on the bills, answers and demurrers. In case said demurrers are overruled, the answers above mentioned and replications may be renewed and stand restored to the record and cause proceed on traverse, and issues thereby made as if they had not been withdrawn." The object of this agreement being to present in the simplest and least expensive manner the question raised by said demurrers December 19th, 1885.

Mrs. Nancy Bradley filed her cross-bill 10th June, 1884, (Transcript, pages 39-48,) in which she sets up her paraphernal claims and legal mortgage on the real property in dispute to the amount of

$29,321.23, and reiterates in her cross-bill all the averments of her answer (above summarized and condensed) and prays for a decree recognizing and establishing her mortgage on the lands in dispute.

To this cross-bill a general demurrer was filed 19th December, 1885. The Circuit Judge on 6th February, 1886, not only sustained this demurrer and dismissed the cross-bill, but practically sustained exceptions to the sufficiency of the answer and decreed to the complainants, a lien, privilege and preference on the property, and declared these claims executory and adjudged to be in all respects superior and paramount to all and any mortgage claim or other debt or demand of Mrs. Nancy A. Bradley, wife of John H. Scheen, and then follows a decree for a sale and for the payment of the proceeds to the complainants, Claflin, et als. (Transcript, pages 52 and 53.)

From this decree Mrs. Bradley and Chaffe, Syndic, prosecute this appeal.

Assignment of Errors.

The Circuit Judge erred :

(1.) In holding the answer to be insufficient.

(2.) In sustaining the demurrer to the cross-bill.

(3.) In holding that complainants had a lien on the real property, in dispute, when the law of

Louisiana gave them none, and when they had no judgment, *fieri facias* or levy.

(4.) In holding that complainants, as ordinary creditors at large of the firm of Lisso & Scheen had a lien and right to be paid by preference out of lands belonging to an individual partner and in preference to Mrs. Scheen an individual creditor, having a prior recorded legal mortgage on the land in dispute.

(5.) In holding that a partnership creditor had a preference to the individual creditor on individual property.

(6.) In holding that after the writs of attachment had been dissolved and set aside, and the debtors had surrendered their property under the State insolvent laws, and had it passed under the control of the State Court, that the Federal Court could by decree establish an equitable lien, and decree a preference in opposition to the decrees of the State Court having jurisdiction of the property, and in preference to a prior recorded mortgage under the State law.

ARGUMENT.

All the allegations of the answer of appellant and of her cross bill, must be taken as true, and the case presents the question whether complainants have any lien or privilege in preference to the legal

mortgage of appellant on the real estate in dispute, situated in Louisiana.

It is settled by this Court, (1) that there is no common law of the United States (Kendall vs. United States, 12 Peters 621,) and (2) that questions to title to real estate and mortgages and liens thereon and their rank and priority, must be determined by the law of the State where the property is situated.

Suydam vs. Williamson, 24 Howard, 427;

McCormick vs. Sullivant, 10 Wheaton, 202;

Green vs. Neal, 6 Peters, 297.

A non-resident complainant can get no greater relief in the courts of the United States, than he could obtain were he to resort to the State courts. Ewing vs. St. Louis, 5 Wallace, 413.

Therefore this case must be determined exclusively by the law of Louisiana.

The difficulty that a lawyer learned in the civil law of Louisiana experiences in making a judge, educated in the common law, appreciate and understand his case, lies in the fact many of the legal ideas and conceptions are different in the two systems; and when the conceptions are substantially the same, the ideas are expressed in a widely different terminology. As for example:

The word *privilege* is equivalent to a statutory lien, in a common law State giving the creditor a

right to be paid, by preference to other creditors out of the property affected by it. It is a creation of the statute law, cannot be granted by contract, but arises from the nature of the debt in the cases, and only in the cases expressly established by statute law and is always *stricti juris*. Louisiana

NOTE.—The numbers in brackets are those of the Code of 1825; those without brackets are of the revised Code of 1870.

Civil Code, Articles 3185, (3151) 3186 (3153).

Stetson vs. Gurney, 17 La. 162;

First Municipality vs. Hall, 2 Ann. (La.) 549;

Fontenot vs. Soileau, 2 Ann. (La.) 774;

Shropshire vs. Russel, 2 Ann. (La.) 961;

Shaw vs. Grant, 13 Ann. (La.) 52.

The phrase *cessio bonorum* is equivalent to surrender in bankruptcy. Syndic is equivalent to assignee in bankruptcy.

The levy of a writ of attachment if it be maintained, does give to the seizing creditor the right to be paid out of the proceeds of the property attached, in preference to other ordinary creditors at large, but not in preference to creditors having a prior mortgage, whether conventional, legal or judicial. Complainants alleged the issuance of a writ of attachment as the only ground for a preference. Defendant conclusively answered this by showing that the writs of attachment had been dissolved by a judgment of the Court, and of course any rights growing out of the writs fell with them.

There remained, therefore, in the original bills the prayer to set aside the conveyance from J. H. Scheen, to his wife Nancy Bradley, of the real estate mentioned in the deeds. But the complainants had no judgment, and of course no *fieri facias* returned *nulla bona* and could not file a creditor's bill. Mrs. Scheen's conveyance might fall and her legal mortgage still remain in force. Therefore complainants filed the last supplemental bill quoted above, in which, without any reasons or facts to support it, they prayed her legal mortgage be decreed to be void, and this the Court below has so done on sustaining a demurrer to her cross bill, and practically sustaining exceptions to her answer. There are no *judgment liens* under the law of Louisiana. A judgment recorded in the office of the Recorder of Mortgages is a judicial mortgage on all the immovable property of the debtor in the parish where recorded. Civil Code, Articles 3321, (3289,) 3322, (3290,) 3329, (3297,) 3346, (3318,) 3347, (3319.)

Article 2390 (2367) Civil Code enacts: "If the husband has received the amount of the paraphernal property thus alienated by his wife or otherwise disposed of the same for his individual interest, the wife shall have a legal mortgage on all the property of her husband for the reimbursing of the same;" and Article 3319 (3289): "The wife has a legal mortgage on the property of her husband in the

following cases. * * * (3.) For the restitution or reimbursement of her paraphernal property." See also Article 3320.

Paraphernal property is all property of the wife, given to her or inherited by her during the marriage (except dotal). Civil Code, Article 2383 (2360). Article 3349 provides for recording the legal mortgage of the wife. This was done on 30th April, 1879, in the Parishes of Red River and Bienville, before the complainants' suits were filed or claims arose.

It is likewise settled law in Louisiana, that when creditors make a *cessio bonorum*, (surrender in insolvency under the State law) all of their property passes under the exclusive control of the Insolvent Court, and that Court alone can pass upon the rank of privileges and mortgages upon the property.

Dwight vs. Smith, 4 Robinson (La.) 32;

Dwight vs. Simon, 4 Annual (La.) 490.

So when the complainants' writs of attachments were dissolved in 1880, and the debtors made a *cessio bonorum*, the property passed under the control of the State Court, which accepted the cession and surrender, and it alone could determine the rank of privileges or mortgages.

However this may be, the complainants do not set forth any facts which entitle them to a privilege on the lands under the laws of Louisiana, and they

do not pretend to have a mortgage, and a "lien in equity" is unknown to the laws of Louisiana as we have shown.

The complainants at the time of filing their bills were not judgment creditors, but ordinary creditors at large of the commercial partnership of Lisso & Scheen, without any privilege or mortgage on the real estate in question, unless the levy of their writs of attachment gave them a privilege, which was lost when their writs were dissolved and set aside on 1st June, 1880.

They acquired no *privilege* or lien by filing their bills. They had no *fieri facias* levied or returned *nulla bona*, and theirs were not "*creditors bills*" as in the case of Miller vs. Sherry, 2 Wallace, 249.

But the equitable lien given by a creditor's bill in a State where the common law prevails, can have no existence in a State where the common law and its complement, the chancery law, does not prevail, and when all liens or their equivalent *privileges* are expressly prohibited, unless established by express statute.

Squire vs. Lincoln, 137 Mass. 403;
Irion vs. Lorett, 122 Mass. 571;
Powers vs. Raymond, 137 Mass. 483;
Jones vs. Green, 1 Wallace, 331;
Day vs. Washburn, 22 Howard, 352;
Stone vs. Chiniquy, 22 Fed. Rep. 213.

But even if the filing of complainants' bills gave them an equitable lien on the property, which they sought to subject to their claims, this would not make them rank Mrs. Scheen's previously recorded mortgage, and it is clear that the Court below erred in decreeing that complainants' claims were superior in rank to that mortgage.

Even if the conveyance (*dation en paiement*) first attacked was set aside, the previously recorded mortgage would revive and attach to the property.

Bauman vs. McKeroy, 14 Annual (La) 590, paragraph 2;

Chaffe vs. Morgan, 30 Annual (La.) 307;

Insurance Association vs. Labranche, 31 Annual (La.) 839;

Spencer vs. Goodman, 33 Annual (La.) 909.

As to any claim of priority or preference, the case of Johnson vs. Waters, 111 U. S. 640, seems conclusive against complainants. Also Adams vs. Preston, 22 Howard, 488.

By the law of Louisiana a commercial partnership can not own immovable property, the partners are joint owners and each undivided share is individual property.

Skillman vs. Purnell, 4 La. 494;

Baca vs. Ramos, 10 La. 417;

McKee vs. Griffin, 23 Annual (La.) 419.

Therefore the lands ordered to be sold and the

proceeds paid to complainants, in preference to appellant, Mrs. Scheen, was individual property, and the Court erred in decreeing a partnership creditor to have a preference on individual property to an individual creditor.

Louisiana Civil Code, Article 2823 (2794);
Skillman vs. Purnell, 3 La. 497;
Bernaid vs. Dufour, 17 La. 596;
Poydras vs. Laurans, 6 Annual 771.

We therefore pray that the decree of the Circuit Court be reversed and the bills of complainant dismissed; and if this relief be denied, that the exceptions to the answer for insufficiency and the demurrer to the cross bills be overruled, and the cause be remanded to be proceeded with according to law.

Respectfully submitted,

WALTER H. ROGERS,

Solicitor for Appellants.

B. R. FORMAN,

Of Counsel.

Office Supreme Court U. S.
FILED.
NOV 14 1889
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 110.

MRS. NANCY A. BRADLEY, WIFE, ET AL.,
vs.
HORACE B. CLAFLIN ET ALS.

REPLY OF APPELLANTS TO BRIEF OF APPELLEES.

B. R. FORMAN,
Of Counsel for Appellants.

I.

ON MOTION TO DISMISS, MADE FOR THE FIRST TIME IN THE BRIEF OF APPELLEES (p. 10).

This case is not like Gibson vs. Schufeld.

By the affidavits annexed to, and forming part of, the petition of appeal, the real estate in dispute is shewn to exceed $10,000 in value. (R., pp. 54 and 55.)

Appellant claims a first mortgage upon it exceeding $29,000, which is contested by the appellees, and denied by the decree.

The original causes were all consolidated (Transcript, p. 19), and thereafter all of the complainants joined in a supplemental bill, attacking appellants' mortgage as null and illegal (Tr., pp. 26 and 27), and the single decree appealed from so treats it.

The appellant in the answer and in the cross-bill sets up a mortgage for $29,000, and the Circuit Judge held the answer insufficient, and sustained demurrer to the cross-bill, and ordered the property to be sold of a value exceeding $10,000, and ordered the proceeds to be paid to complainants. Clearly the "value of the matter in dispute exceeds $5,000." This case should be governed by—

Market Co. vs. Hoffman, 101 U. S., 113.
May vs. Sloan, 101 U. S., 231.
Davies vs. Corbin, 112 U. S., 36.
The Rio Grande, 19 Wallace, 178.
Rodd vs. Heartt, 17 Wallace, 355.
The Connemara, 103 U. S , 754.

The Mamie, 105 U. S., 773.
Ex parte B. & O. R. R., 106 U. S., 5.
Shedds vs. Thomas, 17 Howard, 3.
Freeman vs. Dawson, 110 U. S., 264.

REPLY TO APPELLEE ON THE MERITS.

The basis of the decree of the U. S. Circuit Court of 22d January, 1883, setting aside the *dation en paiement* from John Scheen to his wife (rendered by consent) is found in Chaffe Syndic vs. Scheen, 34 La. Annual Reports, 684, and it will be seen that the opinion and decree in that case in no way affects the wife's legal mortgage given her by the law of Louisiana without any deed of mortgage. (La. Civil Code, Article 3319, (3289) and 3320.)

This very mortgage now set up by appellants was judicially recognized and maintained by the Supreme Court of Louisiana in Scheen vs. Chaffe Syndic, 36. La. Annual Reports, 217.

Therefore, the argument of appellants, that because the lands in controversy had been transferred by John H. Scheen to his wife, which transfer had been annulled and set aside at the suit of his creditors, therefore she could have no mortgage upon the lands, is not sound law according to the jurisprudence of the Supreme Court of Louisiana, for we find that Court setting aside this very conveyance in the former case and sustaining this very mortgage afterward in the latter case. This view is also sustained in Adams vs. Coons, 37 La. Annual Reports, 305.

The case of Townsend vs. Milliken (7 La. Annual), re-

lied on by appellees, is not in point, because in that case the plaintiffs in the revocatory action had executed their judgment, and the money was in the hands of the sheriff, and the Court decided that the syndic who had not been a party to the suit could not claim the money from the sheriff.

Respectfully submitted.

B. R. FORMAN,

Of Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1889.

No. 110.

MRS. NANCY A. BRADLEY, WIFE, ET AL.,

versus

HORACE B. CLAFLIN ET ALS.

[FOUR CAUSES TRIED TOGETHER.]

BRIEF FOR APPELLEES, RESPECTIVELY COMPLAINANTS IN THE CIRCUIT COURT.

In December, 1878, the four mercantile firms who are now appellees and were respectively complainants in the Circuit Court in these four causes, filed their suits in the District Court of Louisiana for the Parish of Red River, against Julius Lisso and John H. Scheen, and against Mrs. Clara Forcheimer, wife of Lisso, and Mrs. Nancy A. Bradley, wife of Scheen, accompanied by attachments, and demanding judgments for their debts, and the revocation of certain transfers of property to the said wives, respectively.

See allegations at pp. 2 and 3, 5 and 6, 8 and 9, and 10 and 11 of Transcript of Record, and for the deed of transfer or *dation en*

paiement annulled in these proceedings as to complainants, see pp. 15-18.

The causes having been removed to the U. S. Circuit Court for the then District of Louisiana, went on the law side of the Court so far as cases at law, and the attachments having been dissolved on technical grounds only, judgments for the money demands were rendered in each case as follows, June 1880:

In favor of H. B. Claflin & Co. vs. Lisso & Scheen, No. 8883 of the docket, for $9580.14, and interest.

H. Bernheim & August vs. Lisso & Scheen, No. 8850, $655.38, and interest.

August, Bernheim & Bauer vs. Lisso & Scheen, No. 8881, $2326.36, and interest.

Claflin & Thayer vs. Lisso & Scheen, $2298.57, and interest.

As soon as these causes had been removed to the U. S. Circuit Court, and prior to the rendition of these judgments, and in November, 1879, the four bills of complaint herein were filed, each in aid of the respective suit at law, as well as for such relief as might be equitable and proper, in order to have such decree as in the Federal Court could only be made on the equity side. See pp. 1-12.

They each set forth the pendency of the suit on the law side and demand, as to complainants respectively, the revocation of the conveyances in question, making all the allegations required in a revocatory action under the laws of Louisiana and demanding that the property be subjected to their claims, which they pray to have liquidated and established.

This revocatory action is given by the Civil Code of Louisiana to a creditor to set aside *as to such creditor, and as to him alone*, a conveyance which is fraudulent and injurious. Rev. C. C. 1970 [1965] to 1977 [1972].

Article 1972 [1967] declares that "it cannot be exercised by individual creditors until their debts are liquidated by a judg-

ment, *unless the defendant in such action* (that is, the grantee) *be made party to the suit brought against the original debtor.*"

This requirement, it will be perceived, was fully complied with, both on the law and equity sides, by making the wives parties. In other words, it was not necessary to have had judgments before filing the bills. The first decree rendered, as will be seen, shows that such judgments were thereafter had, before such decree was made.

It may further be observed here that Article 1977 [1972] of our Code provides as follows:

"The judgment (or decree) in this action, if maintained, shall be that the contract be avoided as to its effects *on the complaining creditors*, and that all the property or money taken from the original debtor's estate, by virtue thereof, or the value of such property to the amount of the debt *be applied to the payment of the plaintiff.*"

This latter Article is not in the Code Napoleon, and was evidently inserted in our Civil Code by Mr. Livingston, who was bred an equity lawyer in New York, for the purpose of giving to the complaining creditor who undergoes the anxiety, expense and risk of such a suit a preference on the property so unmasked. Townsend vs. Miller, 7 La. Annual, p. 633.

The attention of the Court is here called to some dates. The bills of complaint in question were filed November 13th, 1879, in aid of the removed suits which had been filed in December, 1878. Answers were filed by all the defendants, which the appellants have omitted from the Transcript, but the issue as to all was joined by replication, as shown by order at pp. 19 and 20, in March, 1880. And see stipulation.

The insolvency proceedings of Lisso & Scheen, concerning which the appellant, Chaffe, made some claim, were begun in the State Court May 8th, 1880, and plainly cannot affect the com-

plainants' rights as revoking creditors. 7 La. Annual, 633; 16 Fed. Reporter, 897.

The conveyance to Mrs. Bradley, wife of Scheen, which we attacked, was made and recorded November 23, 1878, p. 18.

The alleged legal mortgage of Mrs. Scheen was recorded in Red River Parish April 30th, 1879, and in Bienville Parish June 6th, 1879, p. 31.

On the 7th February, 1880, it was agreed that the four equity suits should be "consolidated and tried together as one cause," p. 19.

On the 8th June, 1882, the complaining creditors filed in the four causes a supplemental bill calling attention to the fact that the Supreme Court of Louisiana had declared the conveyance to Mrs. Scheen void, and asking that Christopher Chaffe, Syndic of Lisso & Scheen, be made a party, p. 26.

On the 23d January, 1883, the first decree in these causes, which has never been appealed from, and which shows on its face that Mrs. Scheen gave up the contest as to the validity of the conveyance to her, was rendered. It should have been brought up and printed at p. 26 of the Transcript, after the order of June 8th, 1882.

By agreement on our part as appellees, it is printed as an addendum, and for convenience we reproduce the greater portion of it.

After rejecting the demands as to Mrs. Lisso, it proceeds with regard to the conveyance to Mrs. Bradley, wife of Scheen, as follows:

"*Second.* That as to the Act of Conveyance or *dation en paiement* recited in the bills of complaint herein, made by the defendant, John H. Scheen, unto the defendant, Nancy A. Bradley, his wife, by act passed before D. H. Hayes, Notary, Parish of Red River, November 23d, 1878, and filed for record and recorded in said Parish in Conveyance and Mortgage books the same day, and whereof a certified copy has been filed as an exhibit herein, November 26th, 1879, and is now annexed hereto as part hereof, be

and the same hereby is in all things revoked, annulled and set aside, and the property therein described and purporting thereby to be conveyed to said Mrs. Nancy A. Bradley, wife of John H. Scheen, declared to have been the property of said John H. Scheen, at the time the bills of complaint herein were filed, to-wit., November 13th, 1879, and is hereby subjected to the just claims, demands and payments of the complainants herein; subject to provisions hereinafter made, which judgments of complainants herein against said Julius Lisso and John H. Scheen *in solido* are as follows:

"H. B. Claflin & Co. vs. Lisso & Scheen, No. 8883, of the docket of this Court, $9,580.14, with interest as therein set forth.

"H. Bernheim & August vs. Lisso & Scheen, No. 8880, $655.38, with interest as therein set forth.

"August, Bernheim & Bauer vs. Lisso & Scheen, No. 8881, $2,326.36, with interest as therein set forth.

"Claflin & Thayer vs. Lisso & Scheen, No. 8882, $2,298.57, with interest as therein set forth.

"And it is further ordered that any mortgage claims which said Mrs. Scheen may have against said property described in said deed of November 23d, 1878, be and the same are hereby reserved for further decision.

"*Third.* And inasmuch as Christopher Chaffe, Jr., Syndic of Lisso & Scheen, appointed in certain proceedings in the State District Court of Red River Parish, which proceedings were begun May 8th, 1880, has been made party hereto and makes claim as much Syndic to all the property described in said Act of Conveyance and *dation* to said Mrs. Nancy A. Bradley, for distribution *pro rata* among the creditors of said Scheen, while the complainants claim that in equity as well as under the law of Louisiana, they are entitled to have the same, or its proceeds applied by preference, in satisfaction, so far as it will go, of their such judgments, it is further ordered that the decision of this question as between the complainants and said Syndic be reserved for further consideration and decree.

"And it is further ordered that the question of costs be reserved for further settlement and taxation.

"Made and entered on consent in open Court of the Solicitors and Counsel of all parties to the record."

On the 23d January, 1883, the complainants filed their further amendment with respect to the alleged mortgage claims of Mrs. Scheen, alleging them to be illegal and null; and if they had any existence, that they were subordinate to the preference accorded by law and equity to the demands of complainants as revoking creditors, pp. 26 and 27.

To this John H. Scheen and Mrs. Nancy A. Bradley Scheen filed a joint and several plea, pp. 27 and 28, setting up a duplicate defense:

1st. That they resided in the *Northern* District of Louisiana, and that they could not be sued in the Court, which during the progress of the litigation, had become the Eastern District. Act of March 3d, 1881, 21 Stat. 507.

This was plainly frivolous. The causes had been begun in 1878 and 1879. There was no Northern District, and by the Act of 1881 the causes would be proceeded with, unless removed to the Western District by consent. Act of 1881, Sec. 4.

The consent shown by decree of Jan. 22, 1883, was the reverse of this, being a consent to continue in the Eastern District. The plea further set up the alleged effect of the State Insolvency of Lisso & Scheen in May, 1880, in depriving the U. S. Court of the jurisdiction it had manifestly acquired of persons and parties in 1878 and 1879.

This plea was overruled Dec. 26, 1883, p. 29.

Chaffe, the Syndic, at this point disappears from the controversy, being, perhaps, satisfied with the correctness of the decree overruling this plea in regard to his supposed claims; or he may have been satisfied with the decision rendered by the same Court in another branch of this litigation, and reported as Claflin vs. Lisso, 16 Fed. Rep. 897, where it was held on his cross-bill that he had no claim as against complaining creditors already in the U. S. Court prior to the State Insolvency.

Mrs. Bradley, wife of Scheen, then filed a separate answer (p. 30), in which she claimed as against complainants' priority for her legal mortgage under the law of Louisiana. This alleged mortgage was recorded for the first time April 30th, 1879, in the one Parish, and on June 6th, 1879, in the other, p. 31. The conveyance to *her* of the property in question was made and recorded in *November, 1878.* And the decree in our favor, revoking

this conveyance, *as to us*, was made, as we have seen above, January 22, 1883. So that when Mrs. Scheen undertook to record her mortgage in April and June, 1879, the property stood in her name by conveyance and record, and her husband, John H. Scheen, was not the owner.

Now, the legal mortgage in Louisiana to secure paraphernal debts due the wife by the husband, bears only on property belonging to the debtor or subsequently acquired. Rev. C. C. 1870, 3319 [3287], 3320 [3288].

It has no force against creditors, or other third persons, except from time of recordation in the Parish where the real estate is situated. Rev. C. C. 3329 [3297]; La. Constitution of 1868, Art. 123, and of 1879, Art. 176; 103 U. S. 231.

It resembles the lien of a judgment in some of the States, where such judgment must be recorded to give a lien on real estate in the county. From 1878 to 1883, therefore, at least, the property was not in John H. Scheen, and as to us alone has the title of Scheen by the proceedings in these causes been set aside. And if, after the decree of January 22, 1883, the property should be considered to be restored to Scheen's estate (but it was not), the preference of the complaining creditors who brought it back at their expense and risk, would attach first, before any claim of Mrs. Scheen, under her invalid conveyance, could attach. The conveyance to Mrs. Scheen of November, 1878, was a "*dation en paiement*," or giving in payment by an insolvent, which is presumably fraudulent and illegal. Rev. C. C. of La. 2658 [2628].

And it would be strange, indeed, if we are to go to the expense and trouble of unmasking this property only that Mrs. Scheen may pounce on it with her alleged mortgage. The authorities are in our favor on this point, as well as the logic of the situation. Claflin vs. Lisso, 24 Fed. Rep.; Miller vs. Sherry, 2 Wall. 249; Lyon vs. Rebbens, 46 Illinois, 279; *In re* Estes, 3 Fed. Rep. 134.

Mrs. Bradley, wife of Scheen, also filed a cross-bill, p. 39, setting up same situation.

To save time and expense, the causes were submitted on bills, answers, and on our demurrers to cross-bill. See consent, p. 49, and demurrers, p. 50.

And the matter was argued in this way, and decided in our favor by the decree appealed from, pp. 52, 53.

The opinion of the learned Circuit Judge is reported as Claflin vs. Lisso, 27 Fed. Rep. 420. The main portion of the opinion is as follows:

"The decree of January 22, 1883, settled the rights of the parties to the property described in the revoked conveyance, making two reservations, one in favor of any mortgage rights bearing on the property that Mrs. Scheen might have, and one as to the question of priority between complainants and the Syndic of Lisso & Scheen. The latter matter has passed out of the case by decree in favor of complainants, rendered December 26, 1883. The decree of January 22, 1883, settles that the complainants are judgment creditors of Lisso & Scheen, and have, for the satisfaction of their judgments, an equitable lien on the property described. The answer and cross-bill aver a legal mortgage of Mrs. Scheen bearing on the same property, and the demurrers admit such a mortgage. The question, then, presented to the Court is one of priority.

"It is too late to deny that complainants have any lien, and also to argue as to the effect of the insolvency proceedings on the jurisdiction of the Court, etc. These questions have been settled by the decrees aforesaid contradictorily with Mrs. Scheen, and for the purposes of this matter are to be taken as well settled. Certainly they are not to be reversed in a collateral way. The proceedings in the State Court recognizing Mrs. Scheen's legal mortgage are *res inter alios acta* as to complainants, and not binding on them. The plaintiffs commenced their revocatory actions in December, 1878, obtained their judgments at the November term, 1879, and the decree declaring their lien January 22, 1883. It is probable, under this state of facts, that the question of priority might be settled in complainant's favor by mere reference to dates, as the legal mortgage of Mrs. Scheen was not recorded until long after the institution of complainant's revocatory actions, to which Mrs. Scheen was a party. If the lien of complainants under said decree of January 22, 1883, relates back to and dates from the institution of the revocatory action, the complainants are prior in time, and entitled to priority of lien. See

Corning vs. White, 2 Paige, 567; Haydin vs. Bucklin, 9 Paige, 512. However this may be, of which I express no opinion, I think the complainants have a clear priority of lien on the facts of the case, as submitted to the Court.

"Under the stipulation on file, the cause is submitted on bills, answers and demurrers, the effect of which is that the facts averred in the complainants' bills not denied or avoided are admitted. The Court takes judicial notice of the decree and orders of court made in the case. From these sources it appears that the firm of Lisso & Scheen was indebted in large sums to complainants; that being involved, and perhaps insolvent, both members of the firm made conveyance of property, partnership and individual, to their respective wives, particularly that Scheen conveyed to his wife, under the form of a *dation en paiement*, certain real estate described; that the complainants commenced suits in December, 1878, against Lisso & Scheen, in the District Court in the Parish of Red River, by attachment and revocatory action combined, which suits were removed to this Court, transcripts being filed here November 3, 1879. In this Court the attachments went on the law side, resulting in a dismissal of the attachments, but in judgments for the debts. The revocatory action went on the equity docket, the pleadings were recast, and the decree of January 22, 1883, resulted. Mrs. Scheen recorded her legal mortgage against her husband in April, 1879, and her contention is that as her mortgage was recorded prior to the recovery of complainants' judgments, that it has priority over complainants' liens on the property recovered in the decree of January 22, 1883.

"As to the complainants, Mrs. Scheen had no mortgage on her husband's property prior to the recordation of the same, and it did not as against complainants attach to the property in suit here when recorded, because at that time Scheen, the husband, had no interest in or ownership of the said property. From the date of the deed of Scheen to Mrs. Scheen until the decree of January 22, 1883, the said property stood in the name of Mrs. Scheen, and was hers to all the world except complainants. The decree of 1883, as resulting from the revocatory action, set aside Mrs. Scheen's title in favor of complainants, but in favor of no one else, least of all, her husband, Scheen. This is the direct effect to be given the revocatory action in this State, which action was the one instituted by the complaining creditors, prosecuted in this Court according to the equity rules and practice. See R. C. C. § 1977; Townsend vs. Miller, 7 La. An. 633.

"At the institution of complainants' suits this property stood in the name of Mrs. Scheen, owner. So far as the facts of this case go, it still stands in the name of Mrs. Scheen, owner, except as to complainants, and Mrs. Scheen, mortgagee, has no stand-

ing under Louisiana law to dispute priority with complainants. But for the confusion of mind resulting from the fact that Mrs. Scheen, grantee in the fraudulent conveyance, and Mrs. Scheen wife of grantor in said conveyance, and mortgagee, are one and the same person, the matter would appear to be too plain for argument. Under general equity principles the case seems equally conclusive.

"As at the time of record of Mrs. Scheen's mortgage the property did not belong to her husband, the mortgage did not attach until the property was subsequently restored to Scheen by the decree of January 22, 1883, declaring the conveyance to Mrs. Scheen *null* and *void*, but at such restoration to Scheen, and as a condition of restoration, it was burdened with the lien of complainants' judgments. Mrs. Scheen, as mortgagee of the subsequently acquired property of her husband, could get no priority over the complainant creditors, whose diligence had unmasked her fraudulent title and had restored the property to her husband's estate. See Lyon vs. Robbins, 46 Ill. 276; Miller vs. Sherry, 2 Wall. 249; *In re* Estes, 3 Fed. Rep. 134."

Mrs. Scheen appealed from the decree; and Mr. Chaffe seems to have also returned to the scene and appealed, pp. 54 to 58.

MOTION TO DISMISS.

$2.27

Under the rules laid down in Gibson vs Shufeldt, 122 U. S. ~~91,~~ this Honorable Court is without jurisdiction as to the respective controversies between both the appellants and the following appellees:

(1) Henry Bernheim and Elias August, composing the firm of H. Bernheim & August, $658.38, interest, etc., at 5 per cent per annum from February, 1879, p. 4.

(2) Simon August, Charles S. Bernheim and Felix L. Bauer, composing the firm of August, Beinheim & Bauer, $2326.38, and interest, etc., at 7 per cent. per annum from March, 1879, p. 7.

3. Charles F. Claflin, $2298.57, and interest, etc., with interest at 7 per cent. per annum from March, 1879.

None of these amounts reach the sum of $5000 exclusive of costs.

We therefore ask your Honors to decline jurisdiction as to these controversies and dismiss both appeals as to the above appellees.

and Thomas B. Thayer
Composing Claflin & Thayer

We understand that no formal motion is required on such a jurisdictional question and that the action we ask might be taken by the Court *ex proprio motu.*

We also submit that the appeal of Christopher Chaffe, Jr., Syndic, should be dismissed as to all the appellees. After the overruling of the plea at p. 27, by decree at p. 29, he seems to have acquiesced in the denial of his claim, and did nothing in the causes until April 1, 1886, when he claimed an appeal.

Points on Merits.

It becomes necessary, at least, as to the controversy between H. B. Claflin & Co. and Mrs. Scheen, where the amount involved is over $9000, to discuss the merits of the decree appealed from.

Replying first to some points made by opposite counsel, we submit:

I.

There is no question of *privilege* in this case, as that word is used in the law of Louisiana in Civil Code, Articles 3186 [3153], *et seq.* Such a privilege springs from the nature of the DEBT, and not from the steps taken to enforce it.

The rights we claim and which are recognized by the Circuit Judge, who has had an experience of about a quarter of a century in the law and jurisprudence of Louisiana, is the *preference* given revoking creditors, who bear the expense of a revocatory suit. Privileges on real estate in Louisiana, like mortgages, have to be recorded to be preserved. Rev. C. C. 3271 [3238]; Constitutions of 1868, Art. 123, and of 1879, Art. 176. The *preference* given by a revocatory suit does not have to be recorded any more than the preference given to a sheriffs' seizure.

The stringent provisions of the above Constitutions, as to privileges, raised the question, whether the preference given by seizure must be recorded, and it was held that such preference given by suit or process, was not a privilege springing

from the nature of the *debt*, and need not be recorded for its preservation. This is plain on principle, and may be inferred from such decisions as Lapene vs. Meegel, 25 La. Annual, 89; where the writer of this brief discussed the point, and the cases there cited. We may avoid, then, any fruitless discussion as to privileges springing from the nature of the debt; and come to the point as to the preference given to the revoking creditor by Article 1977 [1972] already cited above. As to this, our jurisprudence is perfectly settled. In the case of Townsend vs. Miller, 7 La. Annual, 633, the Article is quoted and expounded, and the preference allowed as matter of law and justice; and there is no opinion to the contrary. There a syndic of creditors appointed after the revocatory suit had been begun, and before the decree was signed, tried to appropriate the proceeds for the benefit of the mass of creditors, but was defeated. In Marchand vs. Van Norden, 33 La. Annual, 803, the same preference was given over all other creditors.

In the case of the Succession of Schultz, 39 La. Annual, 505, the latest case on the subject, decided in 1887, the point is established in our favor beyond doubt, and the views of the learned Circuit Judge in case at bar are fully concurred in. This decision applies very strongly on all the points of our case. The decedent, Schultz, had made a fraudulent sale to Anne Kraemer, which had been judicially attacked by William Mackesy by a revocatory action. The fact that he was a judgment creditor is not important, as we have seen, for if he had not yet obtained a judgment he might have brought the same suit by joining, as we did, his debtor and fraudulent vendee. (See Mackesy vs. Schultz, 38 La. An. 385.) Schultz having died, the Public Administrator was made party. After the judgment of revocation, this Administrator, who was in charge of the estate, upon a theory that the revocation of the sale to Kraemer restored the property to the estate of Schultz, offered it for sale, and it was adjudicated at such

public sale to McCloskey. The latter, examining the title, declined to take it on the distinct ground that the revocation of the sale set it aside as to the creditor Mackesy alone, and not as to Kraemer.

The Court sustained this view, cited the Article 1977 on which we rely, and said:

"It therefore follows that under the effect of the judgment the title of Anne Kraemer to the property *was not disturbed*, further than to subject it to the execution of Mackesy's judgment. By paying that judgment, she would have remained the undisputed owner of the property, with all the rights of ownership and possession, which she had acquired under the Act of Sale by Schultz to her, and no other creditor, and no heir of the latter could have claimed any benefit or advantage against her as a result or consequence of the Mackesy judgment.

It is also clear and equally undeniable that, if Schultz had not died, and an execution had issued in favor of Mackesy, any surplus realized at the sale over and above the amount of the latter's judgment, would have been the lawful property of *Anne Kraemer*, and not of Schultz.

"These views are not only supported by the plain words of the text of the article, but they are in full keeping with our uniform jurisprudence on the subject. Labauve vs. Boudreau, 9 Rob. 28; Lucas vs. Damond, 11 An. 169; Loeb & Bloom vs. Arent, 33 An. 1085; Zuberbier & Behan vs. Morse, 36 An. 970; 1 La. 504; Atwill vs. Belden & Co.

"From these premises it is therefore safe to conclude that the succession of Schultz had not been reinvested with title to the property; that the same had been erroneously inventoried and offered for sale as property of the succession, and that the title tendered to McCloskey, the adjudicatee, is a nullity which our law will not compel him to accept."

Mrs. Scheen, then, is still the owner of the property in question, except as to us. We are rightfully accorded a preference on its proceeds, unless she chooses to pay our claims. If it shall bring more than our claims, she will be entitled to the surplus.

II.

This preference on property, concerning which a revocatory action is successfully brought, being thus plainly established, it is equally plain that after the decree of Jan. 22d, 1883, was ren-

dered, setting aside the conveyance to Mrs. Scheen and subjecting the property to the just claims of complainants, Mrs. Scheen could not claim a mortgage on the property prior to the preferential rights of the complainants. The reasoning of the Circuit Judge cited above seems conclusive, but the subsequent case of succession of Schultz, 39 La. Annual, also above cited, is equally conclusive.

The injurious conveyance to Mrs. Scheen is only set aside as to us. In the eye of the law, the property is still hers as to the rest of the world. As we have already intimated, the recorded title, real but fraudulent, of the property passed to Mrs. Scheen, as we have seen, in November, 1878, when she undertook to record her alleged mortgage in April and June, 1879, her husband had neither title nor possession. The lien of the legal mortgage in Louisiana (like that of a judgment in some of the other States) is on the property *belonging to* the mortgagor or debtor in the parish of record, or that he may afterwards acquire. In April and June, 1879, the property in question *did not belong to John H. Scheen, nor has he since acquired it.* Rev. C. C., 3320.

If anything can be plain in law and jurisprudence it is this. The case of Schultz above cited is conclusive. When the conveyance was get aside by the decree of January 22, 1883, our rights there recognized came first, then Mrs. Scheen's as *vendee*, not as mortgagee. 39 La. Annual, 506.

The case of Miller vs. Sherry, 2 Wall, 249, holds the same doctrine in principle. Lyons occupied our position, and had set aside a conveyance from Miller to Williams, and Mills & Bliss claimed under a judgment *senior to the Lyons'*. The Court said:

"The judgment obtained by Mills & Bliss was the elder one, but it was *subsequent* to the *conveyance* from Miller to Williams. It is not contended that the judgment was a lien on the premises. The legal title having passed from the judgment debtor before its rendition by a deed valid as between him and his grantee, it

could not have that effect by operation of law." See also Lyon vs. Robbins, 46 Ill. 279; also, *In re* Estes, 3 Fed. Rep.

If Mrs. Scheen could maintain her claim here, then any other creditor of John H. Scheen, who had simply sued and recorded his judgment, say in April, 1879, could come in and claim the fruits of our long and expensive litigation, which would be preposterous and unjust. It is enough to say that except as to us Mrs. Scheen still owns the property and cannot claim a mortgage by recordation in 1879.

The appellants cite at p. 17 of their brief a number of decisions of the Supreme Court of Louisiana as establishing this proposition, that "even if the conveyance first attacked was set aside, the previously recorded mortgage would revive and attach to the property."

We submit that the proposition quoted is irrelevant. The conveyance to Mrs. Scheen was set aside by the decree of January 22, 1883, which has not been appealed from and could not be. Mrs. Scheen had no "previously recorded mortgage" in any such sense as implied in the decisions cited. Her alleged mortgage, we repeat, was recorded in April and June, 1879, and John H. Scheen had conveyed away the property in November, 1878. Not one of the decisions cited is in point against us. In Bowman vs. McElroy, 14 La. An. 587, the remark cited from p. 590, par. 2, concerns Elam Bowman, who had bought *pendente lite* and held a conventional mortgage which had been established in 1854, long prior to the illegal sale. See decree at p. 592 as to him. The case as to him was not the revocatory action by a creditor, nor was he at all in the position of Mrs. Scheen. The case of Chaffe vs. Morgan, 30 La. Annual, p. 1307, was not the revocatory action by a creditor, nor was Chaffe in the position of Mrs. Scheen. The suit was by Chafle as a mortgage creditor upon a conventional mortageg executed and recorded in 1870, and

Schultz' suit was not begun till 1872. There is no similarity to the case at bar.

Insurance Association vs. Labranche, 31 La. Annual, 839, was not a revocatory action by a creditor, but a suit to annul a tax sale where a holder of a valid prior conventional mortgage had bought at such sale. There is no similarity to the case at bar.

Spencer vs. Goodman, 33 La. Annual, 898, was not a revocatory action by a creditor, and this fact is expressly stated at p. 907. And the reservation at p. 909 of the rights of a holder of mortgage notes refers to a conventional first mortgage existing prior to the sale complained of and presumably valid. See p. 905, line 4.

And here we refer as against appellants to Gridley vs. Connor, 4 La. Annual, p. 411.

The case of Johnson vs. Waters, 111 U. S. 640, is not against us on any point. That was not the revocatory action of a creditor against his debtor and the vendee of the latter, but was a bill filed on behalf of complainant and all similarly situated to redress wrongs in the administration of the succession of a decedent. It was a "class suit," and quite unlike the one at bar.

The case of Adams vs. Preston, 22 Howard, 488, has no resemblance to this. Here the Federal Court was seized of jurisdiction long before the insolvency proceedings.

III.

The decree of January 22, 1883, settled the question of the equity jurisdiction of the Court, and of the revocation of the conveyance from John H. Scheen to his wife, and avoided it as to us; and subjected the property to our claims and to no others.

There can be no doubt of our right to pursue on the equity side of the Federal Court the revocatory action given by the Louisiana Code. This action may differ in some details from the creditor's bill in some of the other States, but it is equitable

in character, and is really a creditor's bill of an excellent sort; and under the principles of Holland vs. Challen, 110 U. S. 15, and cases there cited, the relief provided by the Louisiana Code for the injured creditor may, even if it be in some respects an enlargement or modification of general equity rules, be asked for in the Federal Court on the Chancery side. As stated in the *Broderich Will Case*, 21 Wall. 520, "an enlargement of equitable rights may be administered in the Circuit Courts as well as in Courts of the State."

There is no force, as we have seen, in the suggestion of appellants, that we had no judgments or executions returned unsatisfied before our bills were filed.

1. Such were not required for the revocatory action in Louisiana.

2. The decree annulling as to us the conveyance to Mrs. Scheen has not been complained of, and cannot be appealed from. It was acquiesced in, and no errors have been or could be assigned in regard to it.

Nor is there any force in the suggestion that the property in question was the individual property of the defendant Scheen. The liability of Lisso & Scheen is *in solido*, and as such is not denied. The decree of Jan. 22, 1883, revoked the conveyance as to us, and subjected the property to our claims, and no error is or could be assigned as to this. The law gives us a preference on the property or its proceeds, and it may be sold to pay us, unless Mrs. Scheen chooses to pay us. But as between her and her husband, it is still her property; and the question of whether it was, in 1878, individual or partnership, is irrelevant.

IV.

The errors assigned in the decree, so far as Chaffe, Syndic, is concerned, have no merit. It is manifest that he can have no claim. The U. S. Circuit Court was seized of jurisdiction of

parties and property long before the insolvency proceedings in which he became Syndic or assignee, and his rights, whatever they are, are subordinate to the decrees in these causes. Claflin vs. Lisso, 16 Fed. Rep. 897; Suydam vs. Brodnax, 14 Peters, 67; Union Bank vs. Jolly, 18 How. 503; Green vs. Creighton, 23 Howard, 107.

It is submitted that the appeals should be dismissed as to all appellees except H. B. Claflin & Co. As to them, the decree appealed from should be affirmed.

Respectfully submitted,

W. W. HOWE,

Of Counsel for Appellees.

Office Supreme Court U. S.
FILED.
NOV 12 1889
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 110.

MRS. NANCY A. BRADLEY, WIFE, &c.,

vs.

HORACE B. CLAFLIN ET ALS.

SUPPLEMENTAL MEMORANDA FOR APPELLEES OF ARTICLES OF LOUISIANA CIVIL CODE.

"OF THE REVOCATORY ACTION.

"§ I.

"Article 1970 [1965]. The law gives to every creditor when there is no cession of goods [and there was none in this case when revocatory proceedings were begun], as well as to the representatives of all the creditors, where there is any such cession or other proceedings by which they are collectively represented, an action to annul any contract made in fraud of their rights.

"Art. 1972 [1967]. It cannot be exercised by individual creditors until their debts are liquidated by a judgment unless the defendant in such action [*i. e.*, the grantee] be

made party to the suit for liquidating the debt brought against the original debtor in the manner hereinafter directed.

"Art 1974 [1969]. If during the pendency of the action given by this section the original debtor discharges the debt due to the plaintiff, or acquires the property applicable to its payment and sufficient in amount, such action can no longer be sustained, it being the true intent of the law that a contract avoidable by creditors under this section *cannot on that account be avoided by either of the parties* [to such contract].

"1975 [1970]. The plaintiff in the action given in this section may join the suit for annulling the contract to that which he brings against the original debtor for liquidating his debt by a judgment, and in such suit either of the defendants may controvert the demand of the plaintiff.

"1977 [1972]. The judgment in this action, if maintained, shall be that the contract be avoided as to its effects *on the complaining creditors, and that all the property or money* taken from the original debtors' estate by virtue thereof, or the value of such property to the amount of the debt, *be applied to the payment of the plaintiff.*"

Succession of Schultz, 39 Annual, 505, and cases there cited.

Townsend *vs.* Miller, 7 Annual, 633.

"OF THE GIVING IN PAYMENT.

"Art. 2655 [2625]. The giving in payment is an act by which a debtor gives a thing to the creditor, who is willing to receive it, in payment of a sum which is due.

"Art. 2658 [2628]. This difference [between *sale* and giving in payment] gives rise to another in the effect of these contracts in case of the insolvency of the debtor. He may, though insolvent, lawfully sell for the price which is paid to him; but the law forbids to give in payment to one creditor

to the prejudice of the others any other thing than the sum of money due."

That the right of the complaining creditor to have the conveyance revoked *as to him only*, and to subject the property to his demand and to his only, is a special preferential right and not the "privilege" of the civil law is seen from the following definition:

"OF PRIVILEGES.

"Art. 3186 [3153]. Privilege is a right which the *nature of the debt* gives to a creditor." * * *

A privilege is like an admiralty lien. It springs from the nature of the debt. Our right to revoke as to us and to subject property to our claims, as to us, is not a privilege, but a right given as a result of certain proceedings in court taken at our risk and expense.

Constitution of Louisiana of 1868:

"Art. 123. * * * No mortgage or privilege shall hereafter affect third parties unless recorded in the parish where the property to be affected is situated."

Constitution of Louisiana of 1879:

"Art. 176. No mortgage or privilege on immovable property shall affect third persons unless recorded or registered in the parish where the property is situated." * * *

But our preferential right, dependent on proceedings and not on the nature of the debt to us, is in the nature of *lis pendens*. We are protected by that doctrine, and no provision is made or required in Louisiana for recording a notice of *lis pendens*.

OF THE GENERAL LEGAL MORTGAGE.

The legal mortgage in Louisiana is the creature of law and is general in its character, like the lien of a judgment in those States where such lien is perfected by some docketing or recordation in a public office.

Civil Code, art. 3319 [3287]: "The wife has a legal mortgage on the property of her husband in the following cases."

* * * * * * *

"Art. 3320 [3288]: The creditor who has a legal mortgage, except in the case where certain specific property is subjected to it, may exercise his right on all the immovables belonging to his debtor and on such as may subsequently belong to him."

The exception applies where certain described property is under some provision of law substituted for the general mortgage under order of court to relieve the general lien, and need not be discussed here.

By her recordation of April and June, 1879, Mrs. Scheen acquired a general legal mortgage on all the property *then belonging* to John H. Scheen in the parishes of Red River and Bienville, and which he has since acquired there, and still has it, if she has kept her rights alive; but the property in controversy here did not then belong to him, nor has he since acquired it, and so it is legally impossible that her lien should touch it.

Succession of Schultz, 39 Annual, 505.

Respectfully submitted,

W. W. Howe,
Of Counsel.

132-394

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. ~~119~~.

F. H. AYERS AND JOHN R. HALL, PLAINTIFFS IN ERROR,

vs.

A. E. WATSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

FILED OCTOBER 4, 1886.